United States Court of Appeals

for the Second Circuit

APPENDIX

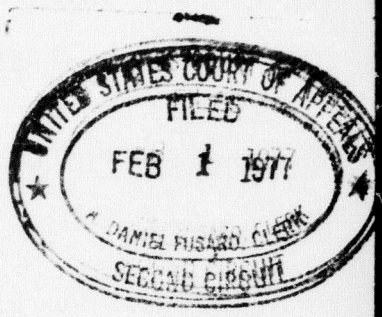
76-7434

ORIGINAL

United States Court of Appeals

For the Second Circuit

Docket No. 76-7434



MICHAEL MEEROPOL and ROBERT MEEROPOL,
Plaintiffs-Appellants,

—against—

LOUIS NIZER, DOUBLEDAY & CO., INC. and FAWCETT PUBLICATIONS, INC.,
Defendants-Appellees.

Bols

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX

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I

MICHAEL MEERPOL VS. LOUIS NIZER, ETC,

73 CIV. 2720

JUDGE GAGLIARDI

DATE	PROCEEDINGS	Judgment No
~~Jun19-73~~	~~Filed Complaint. Issued Summons.~~	
Jun.21.73	Filed Order to Show Cause for Preliminary Injunction. Ret. June 22,1973 Room 501 at 2:15 p.m. TYLER,J.	
*Jun.19,73	Filed Order appointing Marshall Perlin as process server of summons and comp. Clerk.	
Jun.22,73	Filed Stip and Order, adjourning order to show cause until June 29,73. SO ORDERED, TYLER,J.	
Jun19-73	Filed pltffs Exhibit B.	
un.26,73	Filed Affdvt. of service of order to show cause.	
Jun.26,73	Filed affdvt. of service of summons and comp. Served Louis Nizer 6/19/73 and Doubleday & Co by J.T.McGrath 6/19/73.	
Jul 17-73	Filed Stip & Order extending deft's time to answer complaint from 7/9/73 to 7/2[illegible]/73. TYLER,J.	
Jul [illegible]-73	Filed Pltff's Reply Affdvt by Marshall Perlin.	
Jul 19-73	Filed Pltffs'Reply Memorandum of law in support of a Temporary Injunction.	
Jul 19-73	Filed Deft.Louis Nizer's Rebuttal Affdvt by George Berger.	
Jul 19-73	Filed Deft.Doubleday's Memorandum of Law in opposition to Application for preliminary injunction.	
Jul 19-73	Filed Deft Louis Nizer's Memorandum of law in opposition to motion for a temporary injunction.	
Jul 19-73	Filed Answering Affdvt of Deft.Doubleday & Co,Inc.	
Jul 19-73	Filed Deft.Louis Nizer's Answering Affdvts.	
Jul 19-73	Filed Pltff's Surrebuttal Affdvt by Marshall Perlin.	
ul 19-73	Filed OPINION#39686. Accordingly,defts' motion to dismiss first claim is denied without prejudice.Pltffs'motion for temporary injunctive relief is denied in all respects;further,the defts'cross motion to dismiss the first stated claim in the complaint is denied without prejudice to renewal thereof upon an expanded record.So Ordered.TYLER,J. (mn)	
Jul 25-73	Filed Deft,Doubleday & Co.Inc.'s ANSWER	SW&S
Jul 24-73	Filed Deft.Louis Nizer's ANSWER.	PNBK&A
Jul 26-73	Filed Copy of Opinion with Notice of Entry.	
Aug.16-73	Filed Transcript of Record of Proceedings dated 6/29/73	
ug.17-73	Filed Pltffs Michael Meeropol and Robert Meeropol's Notice of Appeal from decision and order dated 7/18/73 and filed 7/19/73 denying pltffs'motion for temporary injunctive relief against defts.(mailed copies)	
ug.1[illegible]-73	Filed Deft.Louis Nizer's Interrogs to Pltffs.	
Oct.24-73	Filed Pltffs Request for Production of documents under FRCp Rule 34	
ct.23-73	Filed Stipulation withdrawing Notice of Appeal is discontd without costs to any of the parties.	
Nov.23-73	Filed Deft's Affdvt & Notice ofMotion for an order directing pltffs to make separate full&responsive answers to Interrogs 10-17&20-60 25 etc ret 11/30/83	
Nov.23-73	Filed Deft Nizer's Memorandum in support of Motion	
Nov.29-73	Filed Affdvt of Robert M.Callagy for Deft.Doubleday&Company,Inc.	
ec.4-73	Filed Stip & Order adjourning motion to 12/7/73.TYLER,J.	
ec.10-73	Filed Memo End.on Notice of Motion dtd 11/23/73,re:order directing pltffs to make separate,full&responsive answers to interrogs. Motion markedoff for non-appearance.So Ordered.Tyler,J.(mn)	
ec.12-73	Filed Stip & Order adjourning motion for protective order to 12/21/73 TYLER,J.	
Dec.20-73	Filed Deft.Louis Nizer's Affdvt pursuant to Rule 9(f)	
Dec.10-73	Filed Memo End.on Notice of Motion dtd forer order directing pltffs to make separate ,full,responsive answers,etc.Motion marked off off for non-appearance.So Ordered.Tyler,J.	
Jan.3-74	Filed Memo End.on motion dtd 11/23/73.Motion restrored,argued and	

(cont'd to page 3)

MICHAEL MEERPOL vs. LOUIS NIZER

73 Civ. 2720

JUDGE [redacted] JUDGE GAGLIARDI II

CIVIL DOCKET Page -2-

DATE	FILINGS--PROCEEDINGS	AMT REPOR ENDL RET
Dec. 26-73	Filed Stip & Order that return date of motion for protective order is adjourned from 12/21/73 to 12/28/73, same time and place. So Ordered. TYLER, J.	
Jan. 3-74	(cont'd from previous page) ruled upon today as indicated . SETTLE ORDER ON NOTICE. TYLER, J(mn)	
Jan. 3-73	Filed Pltffs Answers to interrogs.	
Jan. 3-73	Filed Affdvt in opposition by Marshall Perlin (Pltff) to motion of defts for further answers to certain interrogs.	
Jan. 3-73	Filed Reply Affdvt by G. Berger for Deft Louis Nizer in opposition.	
Jan 28 73	PRE-TRIAL CONFERENCE HELD BY Judge Tyler	
Jan. 15-74	Filed Order requiring further answers to interrogs. Ordered that motion of deft Nizer to compel separate, full&responsive answers to interrogs, etc. no later than 1/16/74 etc. as indicated. TYLER, J. (mn)	
Jan. 23-74	~~Filed Affdvt by T.F. Gilheany for Deft. Sister Bonaventure for~~ personal service upon: Ms. Risa Glaubman - 1/8/74 Pollack & Singer et al-1/18/74	
Jan. 24-74	Filed Affdvt of Service by Mail by S.J. Usakowski for Deft. The Catholic Charities of Archdiocese of NY on 1/23/74: Marcia Robinson Lowry et al	
Jan. 24-74	Filed Deft. The Catholic Charities of Archdiose of NY's Affdvt & Notice of Motion for an order granting the above, leave to file a brief amicus curiae with 3-judge District Court ret. 2/1/74.	
Jan. 24-74	Filed Deft. Catholic Charities, Diocese of Bklyn's Affdvt & Notice of Motion re: order granting the above to file a brief amicus curiae with 3-judge District Court ret. 2/1/74.	
Jan. 24-74	Filed Affdvt of Service by Mail by Claudette Gray for Deft. Catholic Charities, Diocese of Bklyn on 1/23/74 upon Marcia Robinson Lowry et al	
Jan. 25-74	Filed Deft. L. Nizer's response to pltffs' request to produce docum	
Feb. 1-74	Filed deft's memorandum of law in support of motion for, partial summary judgment.	
Jan 30 73	PRE-TRIAL CONFERENCE HELD BY Judge Tyler.	

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Jan 31-74	Filed Pltffs/Answers further to interrogs&Amended interrogs.	
Feb.7-74	Filed Deft Louis Nizer's Request for Production ofDocuments.	
Feb.13-74	Filed Response of Deft.Doubleday to Pltff's Request to produce documents.	
Feb.22-74	Filed Notiee of Change of Address by Attys for Deft.Louis Nizer	
Mar 4 74	PRE-TRIAL CONFERENCE HELD BY Tyler J.	
Mar 11-74	Filed Deft Louis Nizer Notice to take deposition of James Aronson. Issued subpoena.	
Mar.18-74	Filed Pltff's Memorandum in support of application for deferral of consideration of Defts'motion fors summary judgment until completion of discovery relating thereto.	
Mar.20-74	Filed Deft.Fawcett Publications,Inc.(Fawcett)Order to Show Cause & Affdvt re:order staying all proceedings in aforementioned Connecticut action until final determination ret. 3/22/74.TYLER,J.	
Mar.20-74	Filed Deft. Fawcett Publications,Inc.(Fawcett)Memorandum of Law in support of Motion for stay of Connecticut action.	
Mar.25-74	Filed Defts'Reply Memorandum in further support of Motion for Summary Judgment dismissing 2nd :Count of Complaint.	
Mar 27 74	PRE-TRIAL CONFERENCE HELD BY Tyler J.	
Mar.29-74	Filed Notice of Motion to intervene as party deft by Fawcett Publications,Inc.	
Apr.1-74	Filed Affdvt.George Berger re:Suppl.Complaint.	
Apr.3-74	Filed affidavit of R.M.Callagy in reply to affidavit of pltff's, atty. Re: motion to defer settlement of order.	
Apr.3-74	Filed Affdvt.Marshall Perlin for Pltff.	
Apr.3-74	Filed Pltff Notice of Motion for an order vacating and setting aside ,order to show cause ret.3/22/74.	
Apr.3-74	Filed Affdvt of S.Gruber for Pltffs re.order to show cause why temporary injunction should not issue made ret.3/29/74 ,New Haven, Conn.	
Apr.3-74	Filed Pltff's Notice of Motion for an order adjourning settlement of an order to show cause to 4/5/74.	
Apr.3-74	Filed Deft.Doubleday&Co.Inc.Order Staying Connecticut Action. Action is permanently stayed fromt taking any further action or proceedings in Conn. actionu until entryof final judgment&it is	

DATE	PROCEEDINGS (JUDGE GAGLIARDI)
Apr.3-74	(contd)further ordered that motion of Fawcett Pub.Inc.to intervene in this action as party deft&permitting pltffs to file suppl. complaint against Fawcett is granted and it is further ordered that pltffs'motion to vacate order to show cause and temporary stay be&is denied;it is further ordered that pltff's motion seeking to adjoining settlement of this order or in thea alternative ,to stay this order pending an appeal therefrom be and the same hereby is denied.TYLER,J.(mn)
Apr.3-74	Filed Pltff's Affdvt in support of motion and in opposition to proposed order.
Apr.3-74	Filed OPINION#40548.I am signing&filing an order(1)staying the Dist.of Conn.action in allrespects(2)denying pltffs'cross motion to vacate the showccause order heard on 3/22/74; (3)granting motion of Fawcett to intervene as party deft. herein&to permit pltffs to file suppl.complaint against Fawcett.Aforementioned order also denies pltff's application,filed on 4/1/74 to postpone settlement pending appeal therefrom,etc.TYLER,J.(mn)
Apr.2-74	Filed affdvt of R.M.Callagy for Deft.Doubleday&Co/Inc.
Apr.8-74	Filed " of M.Perlin in opposition to Fawcett's Motion to intervene.
Apr.11-74	Filed ANSWER of Fawcett Pub.Inc. S&S
Apr.11-74	Filed Pltffs Statement under General Rule 9(g)
Apr.22-74	Filed " Michael Meeropol et ano's Notice of Appeal from Order of Hon.Harold R.Tyler,Jr.,SDNY filed on 4/3/74 ,permanently staying and enjoining actioned entitled Michael Meeropol,a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v.Fawcett Publications,Inc., permanently staying and enjoining aforesaid pltffs and their attys from taking any action or proceedings in aforesaid action pending in District Court of Connecticut until the final judgment In USDC,SDNY,granting motion of Fawcett Publications,Inc.to intervene in within action as party deft; denying pltffs'motion to vacate order to show cause&temporary stay obtained by Fawcett Publications,Inc. dated 3/19/74 and denying pltffs'motion for stay of order of 4/3/74 pending a appeal therefrom.(Mailed copy to Phillips,Nizer,Benjamin, Krim&Ballon&Saterlee&Stephens on 4/22/74)
Apr.22-74	Filed Pltffs Demand for Jury Trial.
Apr.22-74	Filed Pltffs Notice .
Apr.24-74	Filed Stip&Order by Deft.Louis Nizer that Guardian Radical Newsweekly shall be deemed to have responded to said subpoena andttestified thru Mr.Irwin Silber to facts set forth in said affdvts,whcih affdvts may be used to same extent as if they were given in question&answer from upon deposition. TYLER,J.
May 1,74	Filed Defts Doubleday&Co.Inc&Fawcett Publications,Inc.'s Affdvts &Fawcett Publications,Inc.& Motion to strike Demand for Jury Trial.rsd.5/10/74.
May 1,1974	Filed Memorandum of Law in support of Motion toStrike Pltffs/s Demand for Jury Trial.
May 17,74	Filed Pltff's Notice of Motion to strike answer ret.5/24/74.
May 28=74	Filed Affdvt of Marshall Perlin for Pltff.
May.17-74	Filed pltff's affidavit & notice of motion granting jury trial.

MICHAEL MEEROPOL ET ANO VS. LOUIS NIZER ET ANO
73 Civ.2720

DATE	PROCEEDINGS
May 31-74	Filed Notic3 that record on appeal has been certified and transmitted to USCA,2nd Circuit.
May 31 74	Filed transcript of record of proceedings, dated March 18-21 & May 3 1974
Jun.28-74	Filed MEMORANDUM #40901: Pltff's have waived their right to a jury, trial against Nizer & Doubleday as to the matters raised in their complaint. The deft's motion to strike the jury demand as to Fawcett is denied pending the filing of a supplemental complaint. So ordered. Tyler,J. m/n
Jul.2/74	Filed OPINION 40928 - deft. Nizer has moved for the production of certain documents. Pltffs. have objected to deft.'s request for production concering the following items. Items 4 and 13- pltffs.' objections are overruled Items 5 and 13- pltffs.' objections are overruled Items12- pltffs. aredirected to exhibit to the court in camera the materials in question so that this branch of the motion may be resolved thereafter. Item 7-pltff. must make the letters available to the court for its in camera inspection. Item 8- quashed without prejdudice to possible renewal thereof at a later date. Items 9 and 10- item 9 -granted. Item 11- pltffs ahve agreed to produce such documents. Production of documents for inpection must be made no later than 7/12/74. The same deadline applies to in camera submissions. Tyler,J. mn
Jul 10-74	Filed stipulation that certain copies of missing documents be transmitted to USCA.
Jul 16-74	Filed Memo End. on atchd letter of pltffs'counsel dated 7/5/74 are treated as cross-motions to reargue discovery memorandum and decision of court dated 7/2/74. Gen.Rule 9(m).As such,bohh motions are denied. So ordered.Tyler,J.(mn)
Jul 18-74	Filed Deft.Louis Nizer's Affdvt and Notice of Motion for an order dismission complai with prejudice on grounds that pltffs have failed to obey and order of Court to permit discovery,etc.
Jul 10-74	Filed Deft.Louis Nizer's Memorandum in support of Motion to dismiss complaint.
Jul 10-74	Filed Notice to Docket clerk that suppl.record on appeal has been certified&transmitt to USCA,2nd Circuit.
Jul 24-74	Filed Deft.Louis Nizer's Affdvt for motion to dismiss complaint.
Jul 29-74	Filed Pltffs affdvt in opposition to deft.Nizer's motion
Jul 29-74	Filed Memo End.on Motion of 7/18/74/ Motion denied upon condition that pltffs and the counsel comply with order of 7/2/74 no later than 7/31/74.So Ordered.Tyler,J.
Aug.26-74	Filed Pltffs Notice of Appeal from order ,opinion and findings of Hon.Harold R.Tyler, Jr.Judge,USDC,signed&filed 7/31/74,granting summary judgment to defts.Louisk Nizer and Doubleday&Company,Inc. on 2nd count of pltff's complaint&dismissing aforesaid count of complaint on merits and from each and every part of said, order,opinion and findings.(mailed notice to Phillips,Nizer,Benjamin,Krim&Ball c and Satterlee&Stephens,Esqs. on 8/26/74)
Sep.25-74	Filed Stip&Order (true copy)that motion of defts-appellees dated Aug.29,74 to dismis appeal be granted and that said dismissal is without prejudice to pltffs-appell right to appeal from any final judgment rendered upon decision and order of Hon Harold R.Tyler dated and entered on 7/31/74 and without prejudice to pltffs-ap lants'right to apply to district for certification and entry of judgment and appealing from such judgment and without prejudice to apply to district. So Ordered.Feinberg,Circuit Judge

(contd pg.6)

73 Civ.2720 MICHAEL MEEROPOL ET ANO VS. LOUIS NIZER ET ANO 73 Civ.2720

JUDGE GAGLIARDI JUDGE TYLER

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
Oct.7-74	Filed Pltff's Affdvt&Notice of Motion for an Order that final judgment be entered on Count II of complaint in favor of defts Louis Nizer&Doubleday&Company,Inc. ret.10/11/84.
Oct.7-74	Filed Pltffs Memorandum of Law in support of Pltffs'application for an order directing entry of Judgment under Rule 54(b)or in alternative for certification pursuant to 28 USC,Sec.1292(b)
Oct.10-74	Filed Defts Memorandum of Law in opposition to Pltffs'Motion for an Order permitting an appeal from order dismissing Count III of Complaint.
Oct.11-74	Filed Memo End. on Motion granted to extenk indicated by undersigned at argument on record today.So Ordered.Tyler,J(mn)
Oct.24-74	Filed Pltff's Affdvt&Notice of Motion in opposition to pltffs'motion for certification on gounds that such portions of affdvt&exhibits are immaterial,etc.
Oct.29-74	Filed OPINION#41375. Without further discussion,pltffs'motion to permit an interlocutory appeal is denied in all respects. There is no just reason to now enter an appealable order and judgment in respect to count 2. So Ordered.Tyler, J.(mn)
Oct.29-74	Filed Memo Endson Motion of 10/24/74.Motion granted to extent indicated by undersigned at argument on record today.So Ordered.Tyler,J.(mn)
Nov.12-74	Filed true copy of USCA, 2nd Circuit of Mandate with Order .Order is affirmed in aacordance with opinion of Court with costs to be taxed against appellants. Docketed as Judgment #74,881, 11/13/74 with attached Bill of Costs in sum of $464.04. (mn)
Dec.3-74	Filed Deft.' Fawcett Publications,Inc. Affdvt&Notice of Motion to dismiss action.
Dec.3-74	Filed " " " "Memorandum in support of motion to " "
Dec.3-74	Filed Transcript of Record of Proceedings dated 10/11/74
Dec.16-74	Filed Stip&Order adjourning motion of deft.Fawcett Publications,Inc. from 12/13/74 to 12/20/74.Tyler,J.
Dec.23-74	Filed Memo-endorsed on deft's(Fawcett Publications) motion filed 12-3-74 to dismiss as to them: Motion denied upon condition that pltff's file their supplemental complaint no later than 1-15-75. If not this court will enter judgment dismissing the case as against deft. Fawcett Publications.So ordered. Tyler,J.m
Dec.26-74	Hearing before Tyler,J. with non-jury (IN ERROR)
Dec.26-74	Began and concluded.Order signed.
Jan.2-75	Filed Pltffs reply in support of application to adjourn Fawcett's motion to dismiss or in motion summarily denied.
1/17/75	Filed Pltffs proposed form of mandamus to be ordered by the court to enter an order dismissing the complaint (IN ERROR (See Below)
1/13/75	Filed Pltffs Suppl.Complaint .
1/15/75	Filed " Notice to take deposition of Deft.Louis Nizer.
1/15/75	Filed " Response to Deft Nizer's Request to produce documents.
1/17/75	Filed USCA true copy of order denying petition for a writ of mandamus.
2/4/75	Filed defts.affdvts&Notice of motion for summary judgment ret.2/14/75.
2/4/75	Filed Defts.Answer to suppl.complaint.
2/4/75	Filed Defts'Memorandum of Law in support of motion for summary judgment dismissing suppl.complaint.
2/10/75	Filed Pltff's Notice to take deposition of Otto Premingerâ to produce documents. Issued subpoena.
2/11/75	Filed Pltff's Notice to take deposition " " " " " "
2/18/75	Filed Pltffs Affdvt&Notice of motion for an order adjoutning return date of motion for summary judgment ,etc.ret.2/21/75.
2/18/75	Filed Memo End.on motion of same date:Motion granted as and to the extent that defts summary judgment motion peremptorily against both sides until 3/28/75, 2:15 P.M.&counsel for pltffs directed to serve&file answering papers

(contd pg 7)

JUDGE [redacted] JUDGE CAC

73-2720 MICHAEL MEEROPOL ET ANO VS. LOUIS NIZER ET ANO 72 CIV. 2728

DATE	PROCEEDINGS pg 7	Date Judgm
2/14/75,	(contd)and briefs no later than 3/21/75.So Ordered.Tyler,J.(mn)	
2/18/75	Filed Memo End on Order to show cause of 2/18/75.Motion disposed of as indicated at the conclusion of oral argument.So Ordered.Tyler,J.	
2/18/75	Filed Deft's Order to Show Cause ret.2/14/75,2:15 o'clock.	
2/24/75	Filed pltff's notice to take deposition of deft.Doubleday&Co.	
3/21/75	Filed Affdvts and Notice of Motion re: order staying all proceedings pending action&determination by US Senate on nomination of Tyler,Jr.ret.3/25/75.	
3/26/75	Filed Memo End.on motion of 3/21/75.Motion denied.Since the undersigned has been confirmed by Senate and thus will be departing ,this court soon,this case will be shortly reassigned pursuant to Calendar Rules.So Ordered.Tyler,J. (mn)	
3/27/75	Case reassigned to Pollack,J.(mn)	
4/3/75	Filed Memo End.on motion of 2/4/75.motion denied without prejudice as stated on the hearing minutes of today's proceedings.Pollack,J.	
4-23-75	Filed deft. Nizer's notice to take deposition of pltff. R. Meeropol.	
4-23-75	Filed deft. Nizer's notice to take deposition of pltff. M. Meeropol.	
4-25-75	Filed pltffs.' memo. of law in opposition to deft.s' motion for summary judgment dismissing counts 1 and 3 of the orig. and suppl. complaints.	
4-24-75	Filed transcript of record of proceedings, dated 2/14/75	
04-28-75	Filed pltffs. Statement pursuant to General Rule 9(g).	
05-02-75	Case reassigned to Gagliardi,J (mn)	
05-09-75	Filed Reply Affdvt of Louis Nizer ,deft in support of motion for summary judgment dismissing Counts I and III ,etc.	
05-09-75	Filed Deft.Louis Nizer Reply Memorandum in support of motion for summary judgment.	
05-21-75	Filed Pltffs'surreply affdvt by Marshall Perlin in response to reply affdvt of Louis Nizer.	
05-22-75	Filed Pltffs'Suppl.Memorandum in opposition to motion for summary judgment.	
05-22-75	Filed Deft.Louis Nizer notice to take deposition of Harriet Cutler.	
6/2/75	PRE-TRIAL CONFERENCE HELD BY [illegible]	
03-31-76	Filed Deft.Fawcett's Suppl.Memorandum of Law in further support of motion for summary judgment dismissing Count 1 of Supplemental complaint.	
04-05-76	Filed Affdvt of Geroge Berger for Deft Nizer in response to deft. response to " of Marshall Perlin.	
04-05-76	Filed Pltffs'Suppl.Memorandum of Law in opposition to defts'motion for summary judgment and in response to deft.Fawcett's Memorandum.	
05-06-76	[illegible] 03-26-76	
07-20-76	Filed OPINION#44202.Even if this court were in error in holding that copying here is entitled to fair use protection as matter of law,it would grant summary judgment in favor of defts.Nizer & Doubleday on basis of undisputed facts. Defts motion for summary judgment dismissing complaint is thus granted.So Ordered.Gagliardi,J(mn)	
07-23-76	Filed Judgment that defts.N have judgmant against pltffs dismissing complaint in its entirety.Clk(mn)	
08-23-76	Filed Pltffs'Notice of Appeal from judgmant entered on 7/23/76 dismissing complaint & suppl.complaint in their entirety as well as from order,opinion&findings of Hon.Harold R.Tyler, Jr.signed&filed on 7/31/74 granting summary judgmant to defts Louis Nizer and Doubleday&Company,Inc.on 2nd count of pltffs'complaint& from order,opinion&findings of Hon.Lee P.Gagliardi,signed&filed on 7/20/76 etc as indicated.(mailed copy to Phillips,Nizer,Benjamin,Krim&Ballon&Satterlee &Stephens , Esqs.on 8/24/76)	

COMPLAINT

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

----------x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

-against- : 73 Civ. 2720

LOUIS NIZER and DOUBLEDAY & COMPANY INC., :

Defendants. :

----------x

Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, by their attorney, MARSHALL PERLIN, allege:

COUNT I

1. This action arises under the United States Copyright Laws and pursuant to 17 U.S.C. Section 101. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331(a) and 1338 (a) and (b).

2. The plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, are citizens of the Commonwealth of Massachusetts. The defendant LOUIS NIZER (hereinafter referred to as NIZER) is a citizen of the State of New York and has his principal place of business in the County, City and State of New York.

The defendant DOUBLEDAY & COMPANY INC. (hereinafter referred to as DOUBLEDAY) is a corporation organized under the laws of the State of New York and has its principal place of business in the County, City and State of New York. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand ($10,000.00) Dollars.

3. Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, were born under the names of Michael Rosenberg and Robert Rosenberg, respectively, and are the natural issue of Julius and Ethel Rosenberg. The plaintiffs' natural parents were convicted for violating 50 U.S.C. §34, and sentences of death were imposed on April 5, 1951 by Irving R. Kaufman, then a judge of the United States District Court for the Southern District of New York. On June 19, 1953 the sentences were carried out and the parents of the plaintiffs were executed at the New York State Penitentiary in Ossining, New York.

4. From July and August of 1950, when Julius and Ethel Rosenberg were first arrested, until their execution, they engaged in extensive correspondence with each other, with their children, the plaintiffs herein, with their attorney, Emanuel H. Bloch, and with others to the extent that they were able to do so and in light of prison restrictions imposed upon them.

5. Ethel and Julius Rosenberg delivered said corres-

pondence to their attorney, Emanuel H. Bloch, to hold and secure the same in behalf of themselves and their children, the plaintiffs herein. The Rosenbergs thereafter authorized and directed that Mr. Bloch turn over certain of this correspondence to a corporation to be organized by him, which corporation was to be empowered and authorized to publish and copyright the aforesaid correspondence and hold the same in trust in behalf of the plaintiffs. By the time of their demise, the Rosenbergs had turned over all their correspondence to the corporation organized by Mr. Bloch for the purposes aforesaid. Said corporation was incorporated under the laws of the State of New York under the name Jero Publishing Company, Inc. (hereinafter referred to as Jero). The stockholders of said corporation, pursuant to the direction and wish of the Rosenbergs, were to be Emanuel H. Bloch and other persons designated by him, who were to hold said stock in trust for the benefit of the Rosenberg children, the plaintiffs herein.

6. On April 6, 1953, Emanuel H. Bloch organized Jero with its principal place of business at the offices of Emanuel H. Bloch, 401 Broadway, New York, New York. Jero, at the request of Ethel and Julius Rosenberg, and with their knowledge, consent and approval, arranged for the printing, publication, distribution and sale of a book made up of certain

letters of the Rosenbergs, entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG.

7. Between April 6, 1953 and June 24, 1953, and thereafter, Jero complied in all respects with the United States Copyright Law and all other laws covering copyright and secured the exclusive rights and privileges in and to the copyright of said book's contents and received from the Register of Copyrights a certificate of registration dated June 24, 1953 and bearing Registration No. 96637, Class A. Attached hereto as Exhibit A is a photostatic copy of said certificate of registration. Publication was made with notice, in strict and full compliance with the United States Copyright Law and all other laws governing copyright.

8. The contents of said book were original and were created by Ethel and Julius Rosenberg, citizens of the United States. The contents of said book were and are copyrightable subject matter under the laws of the United States.

9. Since June 10, 1953, said book had been published by Jero, in behalf of plaintiffs herein, and all copies of it made by Jero or under its authority or license had been printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws covering copyright.

10. An indenture and declaration of trust was made, dated August 19, 1953, under the terms of which Emanuel H. Bloch was the initial trustee and was thereafter joined by Shirley Graham Du Bois, Yuri Suhl, James Aronson and Malcolm Sharp as co-trustees under the aforesaid trust instrument. Said trust is known and identified as The Rosenberg Children's Trust Fund (hereinafter referred to as Trust Fund). The named beneficiaries of said trust fund named therein were the children of Julius and Ethel Rosenberg, MICHAEL ROSENBERG and ROBERT ROSENBERG, the plaintiffs herein. On January 30, 1954, Emanuel H. Bloch died, and he was succeeded by Gloria Agrin Josephson as one of the five trustees of the aforesaid trust. The Rosenberg Children's Trust Fund was the sole stockholder of all of the stock authorized to be issued by Jero.

11. On January 3, 1957, a certificate of dissolution was filed by Jero. Said certificate was signed by its sole stockholder, the Trust Fund, by all of its five trustees. The certificate of dissolution was issued by the Secretary of State of the State of New York on January 25, 1957. All assets of the corporation, including the aforesaid copyright and any rights that said corporation had or may have had in the letters, correspondence and writings of Julius and Ethel Rosenberg were thereby conveyed and assigned to the Trust Fund.

12. The Rosenberg Children's Trust Fund, under its terms and by the powers vested with the trustees, was thereafter terminated, and all of the assets of the Trust Fund were given, conveyed and assigned to the plaintiffs herein. Since that time, to reflect the above, the Trust Fund and Jero have duly assigned, transferred and set over, in writing, all copyright interests, including the specific copyright referred to hereinabove and any related rights pertaining to said copyright, all right, title and interest in and to said copyright, and any other copyright interest based thereon, and all renewals and extensions thereof that may be secured now or in the future, and any and all other rights relating to the works encompassed by the said copyright, and any an all rights in and to all letters and correspondence of the Rosenbergs, and including, but not limited to, any and all causes of action theretofore accrued in favor of Jero and the Trust Fund for infringement of and damage to the aforesaid rights and copyrights, to the plaintiffs herein, and constituting and appointing the plaintiffs herein as lawful attorneys-in-fact of the aforesaid assignors with all powers and rights held by them.

13. The plaintiffs herein, at the time of the demise of the Rosenbergs, were the sole beneficiaries of Julius and Ethel Rosenberg under the Laws of Intestacy of the State of New York and their sole surviving heirs.

14. Since June 20, 1968, the plaintiffs have been and still are the sole proprietors of all rights, title and interest in and to the copyrighted book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG. The plaintiffs have been and are the sole proprietors of all rights, title and interest in and to the contents of such book published under the title aforesaid, published under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG (1954) and published under other titles.

15. Defendant NIZER wrote a book entitled THE IMPLOSION CONSPIRACY and defendant DOUBLEDAY, acting in concert and conjunction with defendant NIZER, and both of them, published, printed, distributed, sold and placed upon the market in every state of the United States the aforesaid book and included therein material copied from plaintiffs' copyrighted book and contents and thus have infringed and are continuing to infringe upon the copyright of the plaintiffs.

16. A copy of plaintiffs' copyrighted book is attached hereto as Exhibit B, and a copy of defendants' infringing book is attached hereto as Exhibit C. The plaintiffs have notified in writing the defendants NIZER and DOUBLEDAY that they have been and are infringing upon the copyright of the plaintiffs, and defendants have nethertheless continued to infringe upon the copyright. Attached hereto as Exhibit D is the notice to defendant DOUBLEDAY dated May 10,

1973, and attached hereto as Exhibit E is the notice to defendant NIZER dated May 10, 1973.

17. The defendants herein, prior to the infringement, had full knowledge and notice of the existence of plaintiffs' copyright and notwithstanding that fact the defendants wilfully, knowingly and maliciously infringed upon the copyrights of the plaintiffs herein, all to the damage of the plaintiffs and to the copyright property of the plaintiffs.

18. From January 1973 and continuously since then, defendants NIZER and DOUBLEDAY have been publishing, selling and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY, have been using the copyrighted material of the plaintiffs infringed upon as a means of promoting and selling the aforesaid book, and the defendants NIZER and DOUBLEDAY are engaged and have been engaged in unfair trade practices and unfair competition against plaintiffs to plaintiffs' irreparable damage.

COUNT II

19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 of the complaint with the same force and effect as if fully set forth herein.

20. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand ($10,000.00) Dollars, and this Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1332(a).

21. Defendant NIZER represents in the book entitled THE IMPLOSION CONSPIRACY that he is an experienced trial attorney and a legal scholar who has studied and knows each and every part of the legal proceedings in which the plaintiffs' parents were defendants and that he has studied all of the legal briefs, judicial proceedings and judicial opinions and is authoring the book in a detailed, factual and objective fashion as if he were writing "a critique for a law-review"; that in the course of preparing the book, he had acquired information from "every person I could find who touched their [the Rosenbergs] lives or deaths, as if I were a reporter on a Pulitzer-Prize mission". The defendant NIZER thus holds himself out as knowledgeable of events and conversations, not reflected in the legal proceedings, about the plaintiffs and their parents and the attitudes and feelings of the plaintiffs and their parents towards each other, as well as the relationship of the plaintiffs and their parents with their attorney other members of their immediate family and organizations and individuals who came to the aid of plaintiffs and their parents.

22. The defendant NIZER relates in THE IMPLOSION CONSPIRACY purported statements, conversations and events involving the plaintiffs, their parents and others, and the defendant NIZER purports to set forth in such alleged statements, conversations and description of events the motives of the plaintiffs' parents in regard to such alleged events, conversations and statements and as they pertained to the plaintiffs herein.

23. In order to deceive the reader and to impress the public with the authenticity and credibility of the false, fictitious and distorted writings regarding the plaintiffs and their parents, defendant NIZER used and copied substantial portions of the copyrighted material referred to hereinabove in Count I herein, and used such copied copyrighted material along with the false, fictitious and distorted statements referred to herein, all to embarrass, humiliate and ridicule both the plaintiffs and their parents.

24. By engaging in the conduct complained of herein in paragraphs 21 to 23, the defendants sought to pass off THE IMPLOSION CONSPIRACY as an accurate rendition of the legal proceedings, which it is not, all for the purpose of the defendants' promoting the sale of THE IMPLOSION CONSPIRACY and enhancing the commercial gain the defendants would derive by reason thereof.

25. Defendant NIZER in THE IMPLOSION CONSPIRACY, by malicious use of such false, fictitious and distorted statements regarding conversations and events, sought to establish falsely, as if it were fact, that the parents of the plaintiffs had no true love and affection for the plaintiffs; that the plaintiffs' parents were prepared to and did in fact use and manipulate the plaintiffs in concert with others who were supporting the Rosenbergs for various illegal and nefarious purposes; that the Rosenbergs were prepared to and did in fact desert and reject the plaintiffs and in furtherance thereof the Rosenbergs deliberately made themselves martyrs and wrongfully permitted themselves to be executed.

26. Defendant NIZER, in his writing of the aforesaid book, imparts to the readers thereof that the plaintiffs have rejected and disassociated themselves from their parents, the Rosenbergs, and from what they stood for and represented, and that contrary to the way of life of their parents, the plaintiffs have chosen to live as "normal decent citizens".

27. The aforesaid statements, conversations and events related by the defendant NIZER were false, fictitious, inaccurate and distorted, as the defendant NIZER well knew; and the defendant NIZER made such false, fictitious and distorted statements knowingly and maliciously to the damage of the plaintiffs, the invasion of the rights of the plaintiffs, including the right of privacy. Defendant NIZER knew

by such actions and conduct on his part that he was projecting a false and misleading picture and characterization of the Rosenbergs and the plaintiffs.

28. By reason of the above, the defendants have held up the plaintiffs to ridicule and embarrassment and have invaded plaintiffs' privacy and caused injury to the plaintiffs. By reason of the above, the plaintiffs are entitled to compensatory damages in the sum of One Million ($1,000,000.00) Dollars for damages suffered as a result of the wrongful and malicious conduct of the defendants and punitive damages against the defendants in the sum of One Million ($1,000,000.00) Dollars.

COUNT III

29. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 27 of the complaint with the same force and effect as if fully set forth herein.

30. The plaintiffs, in addition to being the sole owners of the copyrighted property referred to hereinabove, are also the sole owners of all of the writings and correspondence of their parents, Ethel and Julius Rosenberg, which have not heretofore been published or disseminated. The plaintiffs intended and intend to publish and copyright said writings of their parents not heretofore published and copyrighted and intended and intend to do the same in connection

with the aforesaid copyrighted material.

31. As a result of the conduct of the defendants complained of hereinabove, the plaintiffs' property, consisting of the writings of their parents, Julius and Ethel Rosenberg, not heretofore published or copyrighted, have been damaged and impaired and by reason thereof plaintiffs have suffered damages in the amount of One Million ($1,000,000.00) Dollars.

WHEREFORE, plaintiffs pray that this Court enter orders and judgments granting the following relief:

COUNT I

(1) That defendants, their agents, attorneys and employees, and those acting in their behalf and in concert with them, be enjoined, during the pendency of this action and permanently, from infringing said copyrights of plaintiffs in any manner and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled THE IMPLOSION CONSPIRACY;

(2) That the defendants be required to deliver up to be impounded during the pendency of this action all copies of said book entitled THE IMPLOSION CONSPIRACY in their possession or under their control, and to deliver up for destruction all infringing copies and all plates, moulds and other matter for making such infringing copies, until all parts of the book containing the copyrighted material and the letters

of Ethel and Julius Rosenberg or any portions thereof and reference thereto are removed, and that such pages and portions thereof removed from the book be destroyed;

(3) That defendants be required to deliver up to be impounded during the pendency of this action all promotional and advertising material used by the defendants or by others in their behalf in promoting the sale of the book THE IMPLOSION CONSPIRACY which contain any references, directly or indirectly, to the letters of Ethel and Julius Rosenberg, and the aforesaid copyrighted material of the plaintiffs;

(4) That defendants be directed to delete and remove from all copies of the book in the process of being printed, reproduced or published and all copies heretofore printed, reproduced and published all of the copyrighted writings of the plaintiffs and any references thereto, and that defendants deliver up to be impounded during the pendency of this action such deleted and removed pages and portions thereof;

(5) That the defendants be required to pay to plaintiffs such damages as plaintiffs have sustained in consequence of defendants' infringements of said copyrights and said unfair trade practices and unfair competition, and to account for (a) all gains, profits and advantages derived by defendants by said trade practices and unfair competition,

and (b) all gains, profits and advantages derived by defendants by their infringements of plaintiffs' copyright, and such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(6) That defendants pay to plaintiffs the cost of this action and reasonable attorneys fees to be allowed to the plaintiffs by this Court;

COUNT II

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of One Million ($1,000,000.00) Dollars for compensatory damages and One Million ($1,000,000.00) Dollars for punitive damages;

COUNT III

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of One Million ($1,000,000.00) Dollars;

That plaintiffs have such other and further relief as is just in the premises.

MARSHALL PERLIN
Attorney for Plaintiffs
Office & P. O. Address
36 West 44th Street
New York, New York 10036
Tel. (212) 661-1886

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

MICHAEL MEEROPOL, being duly sworn, deposes and says that deponent is one of the plaintiffs in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Michael Meeropol
MICHAEL MEEROPOL

Sworn to before me this
day of June, 1973.

MARSHALL PERLIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-8327700
Qualified in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

ROBERT MEEROPOL, being duly sworn, deposes and says that deponent is one of the plaintiffs in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Robert Meeropol
ROBERT MEEROPOL

Sworn to before me this
18th day of June, 1973.

Marshall Perlin

MARSHALL PERLIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-8327700
Qualified in New York County
Commission Expires March 30, 1974

EXHIBIT A
(Annexed to foregoing Complaint)

Certificate of Registration

PAGE 1a

CERTIFICATE OF REGISTRATION
OF A CLAIM TO COPYRIGHT IN A BOOK PUBLISHED IN THE UNITED STATES OF AMERICA

REGISTRATION NO A 96637 CLASS A

THIS IS TO CERTIFY that the statements set forth on this page, including the date of publication, have been made part of the records of the Copyright Office. The affidavit states that the book was published on June 10 1953 in the United States. In witness whereof the seal of the Copyright Office is hereto affixed.

William Fiske

Register of Copyrights
United States of America

1. COPYRIGHT CLAIMANT OR CLAIMANTS (Full NAMES and ADDRESSES):

Jero Publishing Company, Inc., a New York corporation,
c/o Emanuel H. Bloch, 401 Broadway, New York City 13, N.Y.

2. TITLE OF WORK "Death House Letters of Ethel and Julius Rosenberg".

3. AUTHORS (Includes Editors, Translators, etc.) Full name, pseudonym, if any, and year of birth and, if dead, year of death, are requested for cataloging purposes. Citizenship *must* be given.

(a) Name Ethel Rosenberg (First) (Middle) (Last) Citizenship U.S.A. (Give name of country)
Domicile 354 Hunter Street, Ossining, N.Y. (Address) Birth 1916 (Year) Death 1953 (Year)

(b) Name Julius Rosenberg (First) (Middle) (Last) Citizenship U.S.A. (Give name of country)
Domicile 354 Hunter Street, Ossining, N.Y. (Address) Birth 1918 (Year) Death 1953 (Year)

4. (a) Check one of the following ONLY if your book is:
- ☐ A revised edition of a previously published book.
- ☐ A translation.
- ☐ A serial republished in book form with new matter.
- ☐ United States edition of a book first published abroad on (Date) _____ in the English language and registered under Ad Interim No. _____

(b) If checked above give title and author of original publication (if different from present book). Give brief statement of new matter in this edition.

DATES OF RECEIPT IN COPYRIGHT OFFICE
APPLICATION AND AFFIDAVIT
TWO COPIES JUN 24 1953
FEE $4.00 45148 JUN24'53

5. SEND CERTIFICATE TO: (If refund or other communications are to be sent to another person, give his name in space 6.)

Name Jero Publishing Company, Inc.
c/o Emanuel H. Bloch
Address 401 Broadway (Number and street)
New York City 13, New York (City) (Zone) (State)

6. Name _____ Address _____

EXHIBIT D
(Annexed to foregoing Complaint)

Notice to defendant Doubleday & Co., Inc. by Marshall Perlin

MARSHALL PERLIN
ATTORNEY AT LAW
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

MILTON H. FRIEDMAN

(212) 661-1666

May 10, 1973

Doubleday & Company, Inc.
277 Park Avenue
New York, N. Y.

Re: THE IMPLOSION CONSPIRACY
by Louis Nizer

Gentlemen:

I am the attorney for the children of Julius and Ethel Rosenberg, Michael and Robert. I write this letter in their behalf regarding the above mentioned book printed, published, promoted and distributed by you in association with its author Louis Nizer.

My clients are the owners, common law and statutory, of all the letters and their contents written by their parents, Ethel and Julius Rosenberg while they were incarcerated from July 1950 to the time of their execution on June 19, 1953. These letters were and are fully protected by duly filed and recorded copyright of which both you and Mr. Nizer had and have full notice and knowledge. Ownership and all rights flowing from said copyright are vested with my clients as are all other interests legal and equitable in and to these properties.

The letters of Julius and Ethel Rosenberg from which you print excerpts and portions are the property of my clients. These works have been copyrighted since 1953 and their use and disposition in any form is subject to use only with the written consent and approval of my clients.

As both you and Mr. Nizer know, the letters of the Rosenbergs were published under copyright in 1953 in a book entitled Death House Letters of Julius and Ethel Rosenberg and in subsequent editions under the title The Testament of Julius and Ethel

Rosenberg. Duly authorized editions have been published, pursuant to license in other countries throughout the world.

Neither my clients nor their agents, representatives or employees have authorized or permitted you or Mr. Nizer to use these letters or any part thereof at any time. The unauthorized use of these documents by you and Mr. Nizer constitutes an unlawful infringement upon the rights and property of my clients which has resulted in grievous harm to them as well as the good name of their parents of whom they are proud.

On the acknowledgement page of THE IMPLOSION CONSPIRACY an unwarranted attempt is made to give the color of authenticity for using the Rosenberg letters by making reference to the edition of these letters published in England pursuant to license of the copyright owners. Both Mr. Nizer, an attorney of claimed expertise in these matters, as well as yourselves know that such an "acknowledgement" is no substitute for authorization or permission from the copyright owners.

I note that even on the book jacket specific reference is made by you and Mr. Nizer to the letters of Ethel and Julius Rosenberg, and you exploit these letters for the selfish monetary interests of Mr. Nizer and your firm. It has been brought to my attention that a very substantial sum of money has been expended in promoting this book both prior to and since publication, using all media including newspapers, magazines, radio and television, and that this promotional material in turn uses and makes reference to the letters of Ethel and Julius Rosenberg.

We demand that you immediately cease the printing, publishing, and distribution of the above named book.

We further demand that you do the following:

a) Cease and desist in the printing, publishing, and distributing of any and all copies of the book here in the United States or any place in the world until all parts of the book containing the letters of Ethel and Julius Rosenberg or any portions thereof are removed, and that such pages and portions thereof removed from the book be turned over to me in behalf of my clients or otherwise disposed of pursuant to our direction.

b) All copies of the book in the possession of your agents, distributors or any other entities or firms with whom you have been or are doing business shall be directed by you to return all copies of the book so that the same can be disposed of as provided for in paragraph(a) above.

c) Deliver to us forthwith the plates, matrixes or other devices used to print the material referred to herein, whether contained in the book, book jacket, ads or contained or referred to in any other material used in connection with the book or its promotion.

d) Cease to use any promotional and advertising material through any media that makes reference directly or indirectly to the letters of Ethel and Julius Rosenberg and, further that you recall all such material which may have been heretofore disseminated and hold the same for disposal pursuant to our instructions and directions.

e) Permit no further printing, publishing or reproduction of the book until the material we have referred to hereinabove is totally deleted; prior to any further printing or publishing you make available to us for examination a corrected deleted copy of the book so that we may insure no further infringements on the property rights of my clients will take place or continue in the future.

f) Fully account to us forthwith for all copies of the book printed or reproduced to date as well as for all copies of the book distributed, sold or delivered and deliver a full accounting of all proceeds obtained in connection with this book. This shall also include all agreements and contracts entered into with any parties in this or any other country regarding the use or reproduction of the book or its use in any other fashion including film, stage and television. This would also include all residuary and secondary rights and uses of the book, including paperback publishing and printing, sale, and distribution.

g) Both you and Mr. Nizer acknowledge that you have no right, title, or interest in the aforesaid literary material owned by my clients and that you have no right whatsoever to use the same without the express permission of my clients, which has not been given.

h) We demand a written apology from both you and Mr. Nizer for the improper use of these letters and your having held yourselves out as authorized to use them. We also demand that you and Mr. Nizer acknowledge that what you have done in incorporating such letters in the book and promotional material was done without the authority, knowledge, consent or approval of my clients, Michael and Robert, the owners thereof. You shall distribute such public apology and acknowledgement in all the media used by you heretofore in the promotion of the book. The contents of such apology and acknowledgement shall first be submitted to us for review and approval for form and contents.

The conduct on your part as well as that of Mr. Nizer has been grievously wrong and unconscionable. Not only did you unlawfully use my clients' property and outrageously infringe upon their rights but, further you improperly used these letters both in the book and in various media to promote the sale of the book in an attempt to falsely establish the book's credibility and authenticity.

I will not set forth in detail the numerous false and inaccurate statements contained in the book, the studious omission of pertinent facts of record, and the false projection of what really occurred in the Rosenberg-Sobell case, yet I must in behalf of my clients particularly take note of the fact that the author falsely purports to speak knowingly of my clients' parents, their feelings and emotions. He sets forth fictional conversation and events involving my clients and their parents which give false and misleading impressions to the reader. It is in this context that you and Mr. Nizer have misused the letters of the Rosenbergs, all to shore up and promote the sale of this shabby piece of work which you and the author improperly hold out to be a scholarly legal analysis of the case.

The Rosenberg letters, published after their demise allowed the world to know something about these fine persons as reflected in their correspondence. The letters also served to raise money on behalf of the Rosenbergs' children so that they would have funds during their minority and for their education.

These letters were never intended to be used for the venal purpose of amassing wealth for Mr. Nizer and Doubleday or to help disseminate a false picture of what happened in the Rosenberg case and hold it out as an accurate account.

We therefore demand upon receipt of this letter that both you and Mr. Nizer communicate with me immediately so that the necessary steps can be taken in accordance with the demands set forth in this communication and to work out such other steps as may be necessary to undo, at least in part, some of the great harm already done. This is to further advise you in behalf of my clients that they reserve to themselves all other rights and remedies that they may have including resort to the courts for any necessary equitable and legal relief.

Please be further advised that my clients reserve to themselves

all rights and remedies that they may have by reason of the invasion of their privacy, the publishing of false misleading and inaccurate statements attributed to them and their parents and the purported description of events involving my clients and their parents which in fact never occurred.

I am delivering simultaneously herewith a copy of the letter to Mr. Nizer.

Very truly yours,

Marshall Perlin

MP/br

EXHIBIT E
(Annexed to foregoing Complaint)

Notice to defendant Louis Nizer by Marshall Perlin

MARSHALL PERLIN
ATTORNEY AT LAW
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

MILTON H. FRIEDMAN (212) 661-1866

May 10, 1973

Louis Nizer, Esq.
477 Madison Avenue
New York, N. Y.

Re: THE IMPLOSION CONSPIRACY
Published by Doubleday and
Company, Inc.

Dear Mr. Nizer:

I am the attorney for the children of Julius and Ethel Rosenberg, Michael and Robert. I write this letter in their behalf regarding the above mentioned book printed, published, promoted and distributed by Doubleday & Company, Inc. in association with you as its author.

My clients are the owners, common law and statutory, of all the letters and their contents written by their parents, Ethel and Julius Rosenberg while they were incarcerated from July 1950 to the time of their execution on June 19, 1953. These letters were and are fully protected by duly filed and recorded copyright of which you and Doubleday had and have full notice and knowledge. Ownership and all rights flowing from said copyright are vested with my clients as are all other interests legal and equitable in and to these properties.

The letters of Julius and Ethel Rosenberg from which you took and used excerpts and portions are the property of my clients. These works have been copyrighted since 1953 and their use and disposition in any form is subject to use only with the written consent and approval of my clients.

As both you and Doubleday know, the letters of the Rosenbergs

were published under copyright in 1953 in a book entitled Death House Letters of Julius and Ethel Rosenberg and in subsequent editions under the title The Testament of Julius and Ethel Rosenberg. Duly authorized editions have been published pursuant to license in other countries throughout the world.

Neither my clients nor their agents, representatives or employees have authorized or permitted you or Doubleday to use these letters or any part thereof at any time. The unauthorized use of these documents by you and Doubleday constitutes an unlawful infringement upon the rights and property of my clients which has resulted in grievous harm to them as well as the good name of their parents of whom they are proud.

On the acknowledgement page of THE IMPLOSION CONSPIRACY an unwarranted attempt is made to give the color of authenticity for using the Rosenberg letters by making reference to the edition of these letters published in England pursuant to license of the copyright owners. Both Doubleday and you Mr. Nizer know that such an "acknowledgement" is no substitute for authorization or permission from the copyright owners.

I note that even on the book jacket specific reference is made by you and Doubleday to the letters of Ethel and Julius Rosenberg, and you exploit these letters for your selfish monetary interests and that of Doubleday. It has been brought to my attention that a very substantial sum of money has been expended in promoting this book both prior to and since publication by Doubleday, using all media including newspapers, magazines, radio and television, and that this promotional material in turn uses and makes reference to the letters of Ethel and Julius Rosenberg.

It has been brought to my attention that you in the course of appearances on television and radio have made statements which have falsely imported and given the impression that you have physical possession of the Rosenberg letters and have been authorized to use them. As you well know, you had and have neither possession of the letters nor authority to use them. I am further advised that you have been reading portions of these letters over the radio and television and other audiences. Of course, you have no right to do so. I demand in behalf of my clients that you acknowledge that fact and cease and desist from such action.

I enclose herewith a copy of a letter I have this date sent to your publishers, Doubleday & Company, Inc. I particularly direct your attention to the demands set forth therein, including, but not limited to those items lettered (a) through (h).

We demand that you as author of the book take any and all necessary steps forthwith to see that the demands set forth are complied with on the part of Doubleday as well as yourself.

We further demand that you, as well as Doubleday account to us forthwith for any monies, contractural rights or interests you have received or will receive in connection with the writing, publishing and sale of the book and also set forth any agreements and contracts entered into by you with any party or business entity of any sort with respect to the book in this or any other country regarding the use or reproduction of the book or the use of the material therein in any other fashion, including film, stage and television use of the material contained therein.

The conduct on your part as that of Doubleday has been grievously wrong and unconscionable. Not only did you unlawfully use my

clients' property and outrageously infringe upon their rights but, further you improperly used these letters both in the book and in various media to promote the sale of the book in an attempt to falsely establish the book's credibility and authenticity.

I will not set forth in detail the numerous false and inaccurate statements contained in the book, the studious omission of pertinent facts of record, and the false projection of what really happened in the Rosenberg-Sobell case yet I must in behalf of my clients particularly take note of the fact that you as the author falsely purport to speak knowingly of my clients' parents, their feelings and emotions. You set forth fictional conversation and events involving my clients and their parents which give false and misleading impressions to the reader. It is in this context that you and Doubleday have misused the letters of the Rosenbergs, all to shore up and promote the sale of this shabby piece of work which you as the author and Doubleday improperly hold out to be a scholarly legal analysis of the case.

The Rosenberg letters, published after their demise allowed the world to know something about these fine persons as reflected in their correspondence. The letters also served to raise money on behalf of the Rosenbergs' children so that they would have funds during their minority and for their education.

I, as an attorney have represented Morton Sobell, a co-defendant of the Rosenbergs, since 1955 and hence I was required to examine and am personally acquainted in detail with all the files and records of the case from its very inception. I was thus shocked to read and find that your book contained innumerable inaccuracies in your account and serious omissions of legal proceedings which challenge the basic thesis of your book, that the Rosenbergs received a fair trial from the courts

and prosecution and that the facts warranted the convictions. These errors along with the distortions and fictitious narrations result in a most misleading and deceptive account of a case which culminated in an inexcusable departure from our concept of fair administration of the criminal law, an episode of which the bar will be ashamed for generations to come.

These letters were never intended to be used for the venal purpose of amassing wealth for you and Doubleday or to help disseminate a false picture of what happened in the Rosenberg case.

We therefore demand upon receipt of this letter that both you and Doubleday communicate with me immediately so that the necessary steps can be taken in accordance with the demands set forth in this communication and to work out such other steps as may be necessary to undo, at least in part, some of the great harm already done. This is to further advise you in behalf of my clients that they reserve to themselves all other rights and remedies that they may have including resort to the courts for any necessary equitable and legal relief.

Please be further advised that my clients reserve to themselves all rights and remedies that they may have by reason of the invasion of their privacy, the publishing of false and misleading and inaccurate statements attributed to them and their parents and the purported description of events involving my clients and their parents which in fact never occurred.

I am delivering simultaneously herewith a copy of this letter to Doubleday & Company, Inc.

Very truly yours,

Marshall Perlin

MP/br

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, : 73 Civ. 2720 HRT

-against- :

ANSWER

LOUIS NIZER and DOUBLEDAY & COMPANY, INC., :

Defendants. :

- -x

Defendant, Doubleday & Company, Inc. ("Doubleday"), by its attorneys, Satterlee & Stephens, for its answer to the complaint alleges as follows:

FIRST: Upon information and belief, denies each and every allegation contained in paragraph 1.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph 2, except that it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations that (1) the plaintiffs are citizens of the Commonwealth of Massachusetts, and (2) that defendant, Louis Nizer ("Nizer"), is a citizen of the State of New York and has his principal place of business in the County, City and State of New York, and except that it admits that Doubleday is a corporation organized under the laws of the State of New York and has its principal place of business in Garden City, County of Nassau, State of New York.

THIRD: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except that it admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. §34 and that sentences of death imposed upon them on or about April 5, 1951 by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York, on June 19, 1953.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, and 6.

FIFTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 7, except that it admits that Exhibit A annexed to the complaint purports to be a true copy of Registration No. 56637, Class A, issued by the Register of Copyrights, and that a copy of a book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG was published bearing a purported notice of copyright.

SIXTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 8 and 9, except that it denies that the contents of said book were and are copyrightable subject matter under the laws of the United States.

SEVENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraphs 10 and 11, except that it admits that on or about January 3, 1957, what purports to be a Certificate of Dissolution, signed by five persons allegedly on behalf of the Rosenberg Children's Trust Fund, was filed by Jero Publishing Company, Inc. with the Secretary of State of the State of New York.

EIGHTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 12, 13, and 14.

NINTH: Upon information and belief, denies each and every allegation contained in paragraph 15, except that it admits that defendant Nizer wrote a book entitled THE IMPLOSION CONSPIRACY, which book was printed, published, distributed, sold, and placed upon the market in various states of the United States by the defendant Doubleday and admits that included therein were excerpts from letters which also appear in the DEATH HOUSE LETTERS.

TENTH: Upon information and belief, denies each and every allegation contained in paragraph 16, except that it admits that Exhibits D and E are true copies of letters addressed to defendants Nizer and Doubleday respectively.

ELEVENTH: Upon information and belief, denies each and every allegation contained in paragraph 17.

TWELFTH: Denies each and every allegation contained in paragraph 18, except that it admits that from February, 1973 and continuously since then defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY.

THIRTEENTH: With respect to paragraph 19, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 18, inclusive, with the same force and effect as if fully set forth herein.

FOURTEENTH: Upon information and belief, denies each and every allegation contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28, and respectfully refers the Court to THE IMPLOSION CONSPIRACY for the contents thereof.

FIFTEENTH: With respect to paragraph 29, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 27, inclusive, with the same force and effect as if fully set forth herein.

SIXTEENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

SEVENTEENTH: Upon information and belief, denies each and every allegation contained in paragraph 31.

ALL AFFIRMATION DEFENSES ARE STATED UPON INFORMATION AND BELIEF

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNTS ONE, TWO AND THREE

EIGHTEENTH: The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT ONE

NINETEENTH: Any utilization by the defendants of material from the DEATH HOUSE LETTERS as to which a valid copyright may exist was a fair use thereof.

AS AND FOR A THIRD AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTIETH: The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-FIRST: Consent to the use by the defendants of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-SECOND: The material complained of as infringed by the defendants or a substantial portion thereof, is in the public domain.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-THIRD: Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-FOURTH: The plaintiffs are guilty of laches and come into Court with unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE TO COUNT TWO

TWENTY-FIFTH: THE IMPLOSION CONSPIRACY was written by defendant, Louis Nizer, a famous trial lawyer of national reputation, and an author of a number of literary works which, generally speaking, have been received with considerable acclaim both by literary critics and the reading public. Mr. Nizer's MY LIFE IN COURT, THE JURY RETURNS, AN ANALYSIS AND COMMENTARY ON THE OFFICIAL WARREN COMMISSION REPORT - as was THE IMPLOSION CONSPIRACY - were published by defendant Doubleday. In the course of its dealings with defendant Nizer over many years, relative to publication of his literary works, defendant Doubleday formed a high opinion of Mr. Nizer's reliability to gather and state facts correctly, to be fair in the handling of facts and to be an author of integrity.

THE IMPLOSION CONSPIRACY is, upon information and belief, a true account of a trial of an indictment handed down in the United States District Court for the Southern District of New York and the resulting verdict and sentencing of Julius and Ethel Rosenberg, charging them with passing to Soviet Russia the secrets of the device that triggered the atomic bomb. There was, attendant upon the trial, conviction and subsequent execution of Julius and Ethel Rosenberg, world-wide press coverage of these events and there has been ever since, continuing to the present time, substantial public interest in the aforesaid events. At the time of publication, and at all times thereafter, defendant Doubleday believed that all statements of fact contained in THE IMPLOSION CONSPIRACY were and are true and that

any comment upon said facts by the author was fair and reasonable. In publishing THE IMPLOSION CONSPIRACY, the defendant Doubleday conducted itself according to the usual practices then and now obtaining in the business of the publication of trade books. Defendant Doubleday, in publishing said book, was acting within the rights provided to it, as to all citizens, by the First Amendment to the Constitution of the United States. The context of the book consisted of matter the publication of which falls within the protection of the First Amendment to the Constitution of the United States.

WHEREFORE, Doubleday demands judgment dismissing the plaintiffs' complaint herein, together with costs and disbursements, and for such other and further relief as may be just and proper.

Dated: New York, N. Y.
July 24, 1973.

SATTERLEE & STEPHENS
Attorneys for defendant,
DOUBLEDAY & COMPANY, INC.

By _____
A Member of the Firm

Office & P. O. Address
277 Park Avenue
New York, New York 10017

Telephone: (212) 826-6200

ANSWER OF DEFENDANT LOUIS NIZER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, Plaintiffs,	73 Civ. 2720 HRT
- against -	ANSWER
LOUIS NIZER and DOUBLEDAY & COMPANY, INC., Defendants.	

Defendant Louis Nizer by his attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, answering the complaint herein, states:

1. Denies each and every allegation contained in paragraph 2, except denies knowledge or information sufficient to form a belief as to the truth of the allegations that the plaintiffs are citizens of the Commonwealth of Massachusetts and that Doubleday & Company, Inc. is a corporation organized under the laws of the State of New York, and except admits that Louis Nizer is a resident of the State of New York and has his principal place of business in the County, City and State of New York.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in

paragraph 3, except admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. § 34 and that sentences of death imposed upon them on or about April 5, 1951 by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York on June 19, 1953.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, except admits, upon information and belief, that during the period therein indicated, Julius and Ethel Rosenberg engaged in correspondence.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraphs 5 and 6, except admits that on or about April 6, 1953, Jero Publishing Company, Inc. was incorporated under the laws of the State of New York, with its principal place of business designated as 401 Broadway, New York, N. Y.

5. Denies each and every allegation contained in paragraph 7, except admits that Exhibit A annexed to the complaint is a true copy of Registration No. 96637, Class A, issued by the Register of Copyrights, and that a publication entitled Death House Letters of Ethel and Julius Rosenberg

was published bearing a purported notice of copyright.

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 8 and 9, except denies that all copies of said book made by Jero or under its authority or license, have been printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws governing copyright and further denies that the contents of said book were and are copyrightable subject matter under the laws of the United States.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 except admits that on or about January 30, 1954, Emanuel H. Bloch died.

8. Denies each and every allegation of paragraph 11, except admits that on or about January 3, 1957, a Certificate of Dissolution, signed by five persons allegedly on behalf of the Rosenberg Children's Trust Fund, was filed by Jero Publishing Company, Inc. with the Secretary of State of the State of New York.

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 12, 13 and 14.

10. Denies each and every allegation contained in

paragraph 15, except admits that the defendant Louis Nizer wrote a book entitled The Implosion Conspiracy, which book was printed, published, distributed, sold and placed upon the market in various states of the United States by the defendant Doubleday & Company, Inc. and admits that included therein were excerpts from letters which also appear in the Death House Letters.

11. Denies each and every allegation contained within paragraph 16, except admits that a copy of the Death House Letters is attached to the Complaint as Exhibit B and a copy of The Implosion Conspiracy is attached to the Complaint as Exhibit C and that Exhibits D and E are true copies of letters to the defendants written on or about the dates indicated.

12. Denies each and every allegation contained within paragraph 17.

13. Denies each and every allegation contained within paragraph 18, except admits that from February, 1973 and continuously since then the defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled The Implosion Conspiracy.

14. With respect to paragraph 19, repeats and realleges the denials, the denials of knowledge or information sufficient to form a belief and admissions set forth

in paragraphs 1 through 13 hereof.

15. Admits that the plaintiffs purport to base their action pursuant to the provisions of the statute cited in paragraph 20.

16. Denies each and every allegation contained in paragraphs 21, 22, 23, 24, 25, 26, 27, and 28, and respectfully refers the Court to The Implosion Conspiracy for the contents thereof.

17. With respect to paragraph 29, repeats and realleges the denials, the denials of knowledge or information sufficient to form a belief and admissions set forth in paragraphs 1 through 16 hereof.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

19. Denies each and every allegation contained in paragraph 31.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNT ONE

20. Any utilization by the defendants of material from the Death House Letters as to which a valid copyright may exist was a fair use thereof.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT ONE

21. The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO COUNT ONE

22. Consent to the use by the defendants of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO COUNT ONE

23. The material complained of as infringed by the defendants or a substantial portion thereof, is in the public domain.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO COUNT ONE

24. Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE TO COUNT ONE

25. The plaintiffs are guilty of laches and come into Court with unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE TO COUNTS ONE, TWO AND THREE

26. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE TO COUNT TWO

27. The Implosion Conspiracy deals with a subject of historical significance of which the plaintiffs were a part. Any statements contained therein of or concerning the plaintiffs are privileged by virtue of the First and Fourteenth Amendments to the U. S. Constitution.

AS AND FOR A NINTH AFFIRMATIVE
DEFENSE TO COUNT TWO

28. Any statements in The Implosion Conspiracy of or concerning the plaintiffs consist of facts truly stated or comment fairly based thereon.

AS AND FOR A TENTH AFFIRMATIVE
DEFENSE TO COUNT TWO

29. Defendant, in making any statement of or

concerning the plaintiffs in The Implosion Conspiracy reasonably relied upon reliable sources as the bases of his statements.

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON

By George Berger
A Member of the Firm

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, Plaintiffs, -against- LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC., Defendants.	73 Civ. 2720 (HRT) ANSWER

Defendant, Fawcett Publications, Inc. ("Fawcett"), by its attorneys, Satterlee & Stephens, Inc., for its answer to the complaint, alleges as follows:

FIRST: Upon information and belief, denies each and every allegation contained in paragraph 1.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph 2, except that it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations (1) that the plaintiffs are citizens of the Commonwealth of Massachusetts, (2) that the defendant, Louis Nizer ("Nizer"), is a citizen of the State of New York and has his principal place of business in the City, County and State of New York, and (3) that the defendant, Doubleday & Company, Inc. ("Doubleday"), is a corporation organized under the laws of the State of New York and has its principal place of business in the City, County and State of New York.

THIRD: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except that it admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. §34 and that sentences of death imposed upon them on or about April 5, 1951 by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York, on June 19, 1953.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

FIFTH: Upon information and belief denies each and every allegation contained in paragraph 17.

SIXTH: Denies each and every allegation contained in paragraph 18, except denies knowledge or information sufficient to form a belief as to whether from February, 1973 and continuously since then defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY.

SEVENTH: With respect to paragraph 19, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 18, inclusive, with the same force and effect as if fully set forth herein.

EIGHTH: Upon information and belief, denies each and every allegation contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28, and respectfully refers the Court to THE IMPLOSION CONSPIRACY for the contents thereof.

NINTH: With respect to paragraph 29, repeats and re-alleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 27, inclusive, with the same force and effect as if fully set forth herein.

TENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

ELEVENTH: Upon information and belief, denies each and every allegation contained in paragraph 31.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNTS ONE, TWO AND THREE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWELFTH: The complaint fails to state a claim against Fawcett upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

THIRTEENTH: Any utilization by defendant Fawcett of material from the DEATH HOUSE LETTERS as to which a valid copyright may exist amounted to fair use thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

FOURTEENTH: The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

FIFTEENTH: Consent to the use by defendants Nizer and Doubleday of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

SIXTEENTH: The material complained of as infringed by defendant Fawcett, or a substantial portion thereof, is in the public domain.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

SEVENTEENTH: Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

EIGHTEENTH: The plaintiffs are guilty of laches and come into Court with unclean hands.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT TWO, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

NINETEENTH: THE IMPLOSION CONSPIRACY was written by defendant, Louis Nizer, a famous trial lawyer of national reputation, and an author of a number of literary works which, generally speaking, have been received with considerable acclaim both by literary critics and the reading public. Mr. Nizer's MY LIFE IN COURT, THE JURY RETURNS, AN ANALYSIS AND COMMENTARY ON THE OFFICIAL WARREN COMMISSION REPORT -- as was THE IMPLOSION CONSPIRACY -- were published in the hard cover edition by defendant Doubleday and in the paperback form by defendant Fawcett. In the course of its dealings with defendant Doubleday over many years, relative to publication in paperback form of literary works which were originally published in hard cover by defendant Doubleday, defendant Fawcett has formed a high opinion of defendant Doubleday's reliability as a publisher of the highest standards.

THE IMPLOSION CONSPIRACY is, upon information and belief, a true account of a trial of an indictment handed down in the United States District Court for the Southern District of New York and the resulting verdict and sentencing of Julius and Ethel Rosenberg, charging them with passing to Soviet Russia the secrets of the device that triggered the atomic bomb. There was, attendant upon the trial, conviction and subsequent execution of Julius and Ethel Rosenberg, world-wide press coverage of these events and there has been ever since, continuing to the present time, substantial public interest in the aforesaid

events. At the time of publication, and at all times thereafter, defendant Fawcett was informed that defendant Doubleday believed that all statements of fact contained in THE IMPLOSION CONSPIRACY were and are true and that any comment upon said facts by the author was fair and reasonable and, therefore, that in publishing THE IMPLOSION CONSPIRACY in the hard cover edition, the defendant Doubleday conducted itself according to the usual practices then and now obtaining in the business of the publication of trade books. Based on the above, defendant Fawcett, in publishing the paperback edition of said book, was acting within the rights provided to it, as to all citizens, by the First Amendment to the Constitution of the United States. The context of the book consisted of matter the publication of which falls within the protection of the First Amendment to the Constitution of the United States.

WHEREFORE, Fawcett demands judgment dismissing the plaintiffs' complaint herein, together with costs and disbursements, and for such other and further relief as may be just and proper.

Dated: New York, N. Y.
April 10, 1974.

SATTERLEE & STEPHENS

By _____
A Member of the Firm

Attorneys for defendant,
FAWCETT PUBLICATIONS, INC.
Office & P. O. Address
277 Park Avenue
New York, New York 10017

Telephone: (212) 826-6200

PLAINTIFF'S DEMAND FOR JURY TRIAL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC.,

Defendants.

- X

74 Civ. 2720
(HRT)

DEMAND FOR JURY TRIAL

S I R S :

PLEASE TAKE NOTICE that the plaintiffs demand trial by jury in this action.

Dated: New York, New York
April 20, 1974

Marshall Perlin

Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1886

TO:

CLERK
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
Attorneys for Defendant Louis Nizer
40 West 57th Street
New York, New York 10019

SATTERLEE & STEPHENS
Attorneys for Defendants
Doubleday & Company, Inc. and
Fawcett Publications, Inc.
277 Park Avenue
New York, New York 10017

PLAINTIFF'S NOTICE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

73 Civ. 2720
(HRT)

LOUIS NIZER, DOUBLEDAY & COMPANY, INC.
and FAWCETT PUBLICATIONS, INC.,

NOTICE

Defendants.

- X

S I R S :

PLEASE TAKE NOTICE that the plaintiffs having this day demanded a trial by jury, have reserved to themselves the right to move against or respond to the pleading denominated answer by Fawcett Publications, Inc. dated April 10, 1974.

Dated: New York, New York
April 20, 1974

Marshall Perlin

Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1886

TO:

CLERK
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
Attorneys for Defendant Louis Nizer
40 West 57th Street
New York, New York 10019

SATERLEE & STEPHENS
Attorneys for Defendants
Doubleday & Company, Inc. and
Fawcett Publications, Inc.
277 Park Avenue
New York, New York 10017

SUPPLEMENTAL COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, Plaintiffs, -against- LOUIS NIZER, DOUBLEDAY & COMPANY, INC., and FAWCETT PUBLICATIONS, INC., Defendants.	SUPPLEMENTAL COMPLAINT 73 Civ. 2720 (HRT)

Plaintiffs MICHAEL MEEROPOL, also known as MICHAEL ALLEN ROSENBERG, and ROBERT MEEROPOL, also known as ROBERT HARRY ROSENBERG, by their attorneys, allege:

COUNT I

1. This action arises under the United States Copyright Laws and pursuant to 17 U.S.C. Section 101. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331(a) and 1338(a) and (b).

2. The plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, are citizens of the Commonwealth of Massachusetts. The defendant LOUIS NIZER (hereinafter referred to as NIZER) is a citizen of the State of New York and has his principal place of business in

the County, City and State of New York. The defendant DOUBLEDAY & COMPANY, INC. (hereinafter referred to as DOUBLEDAY) is a corporation organized under the laws of the State of New York and has its principal place of business in the County, City and State of New York. The defendant FAWCETT PUBLICATIONS, INC. is a Delaware corporation with its principal office and place of business in Greenwich, Connecticut and upon information and belief authorized to do business in the State of New York, with offices in the County, City and State of New York. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand ($10,000.00) Dollars.

3. Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, were born under the names of Michael Allen Rosenberg and Robert Harry Rosenberg, respectively, and are the natural issues of Julius and Ethel Rosenberg and the sole heirs and legatees under the last Wills and Testaments of Julius and Ethel Rosenberg. The plaintiffs' natural parents were convicted for violating 50 U.S.C. § 34, and sentences of death were imposed on April 5, 1951 by Irving R. Kaufman, then a judge of the United States District Court for the Southern District of New York. On June 19, 1953 the sentences were carried out and the parents of the plaintiffs were executed at the New York State Penitentiary in Ossining, New York.

4. At all times each of the plaintiffs was and is a

private individual both under the names of "Rosenberg" and "Meeropol". The plaintiffs from the time of their parents' arrest were kept secluded and protected and were never made public figures by their parents or those in whose care they were placed. In or about the early part of 1954 the plaintiffs were placed in the custody of their future adoptive parents, ABEL MEEROPOL and ANN MEEROPOL and thereafter assumed the name of their adoptive parents and continued to remain private individuals. Shortly after the execution of plaintiff's parents, solely by reason of third parties seeking to interfere and while they were in the custody of the Meeropols, the identity of the plaintiffs under the names "Meeropol" and "Rosenberg" was, not at plaintiffs' or the Meeropols' initiative, reported in the media.

5. From July and August of 1950 when Julius and Ethel Rosenberg were first arrested, until their execution, they engaged in extensive correspondence with each other, with their children, the plaintiffs herein, with their attorney, Emanuel H. Bloch, and with others to the extent that they were able to do so and in light of prison restrictions imposed upon them.

6. Ethel and Julius Rosenberg delivered said correspondence to their attorney, Emanuel H. Bloch, to hold and secure the same in behalf of themselves and their children,

the plaintiffs herein. The Rosenbergs thereafter authorized and directed that Mr. Bloch turn over certain of this correspondence to a corporation to be organized by him, which corporation was to be empowered and authorized to publish and copyright the aforesaid correspondence and hold the same in trust in behalf of the plaintiffs. By the time of their demise, the Rosenbergs had turned over all their correspondence to the corporation organized by Mr. Bloch for the purposes aforesaid. Said corporation was incorporated under the laws of the State of New York under the name Jero Publishing Company, Inc. (hereinafter JERO). The stockholders of said corporation, pursuant to the direction and wish of the Rosenbergs were to be Emanuel H. Bloch and other persons designated by him, who were to hold said stock in trust for the benefit of the Rosenberg children.

7. On April 6, 1953, Emanuel H. Bloch organized Jero with its principal place of business at the offices of Emanuel H. Bloch, 401 Broadway, New York, New York. Jero, at the request of Ethel and Julius Rosenberg and with their knowledge, consent and approval, arranged for the printing, publication, distribution and sale of a book made up of certain letters of the Rosenbergs, entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG.

8. Jero complied in all respects with the United

States Copyright Law and all other laws covering copyright and secured the exclusive rights and privileges in and to the copyright of said book's contents and received from the Register of Copyrights a certificate of registration dated June 24, 1953 and bearing Registration No. 96637, Class A. Attached hereto as Exhibit A is a photostatic copy of said certificate of registration. Publication was made at all times with proper copyright notice in strict and full compliance with the United States Copyright Law and all other laws governing copyright pertaining thereto.

9. The contents of said book were original and were created by Ethel and Julius Rosenberg, citizens of the United States. The contents of said books were and are copyrightable subject matter under the laws of the United States. Said letters are of high literary quality and uniqueness.

10. Since June 10, 1953, said book had been published by Jero and all copies of it made by Jero or under its authority or license had been printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws covering copyright. Jero licensed certain other publishers in countries throughout the world to publish some or all of the contents of the said book DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG. Jero published subsequent editions of said book under the same title and such book with

addenda under the title of THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG, with proper copyright notices affixed thereto.

11. On August 19, 1953, a written trust was established under the terms of which Emanuel H. Bloch was the initial trustee and was thereafter joined by Shirley Graham, also known as Shirley Graham Du Bois, Yuri Suhl, James Aronson and Malcolm Sharp as co-trustees under the aforesaid trust instrument. Said trust is known and identified as The Rosenberg Children's Trust Fund (hereinafter TRUST FUND). The named beneficiaries of said trust fund were the children of Julius and Ethel Rosenberg, MICHAEL ALLEN ROSENBERG and ROBERT HARRY ROSENBERG, the plaintiffs herein. Emanuel H. Bloch died on January 30, 1954 and Gloria Agrin, also known as Gloria Josephson, succeeded him as a successor trustee of the Trust Fund. The Trust Fund was the sole stockholder of Jero.

12. On January 3, 1957, a certificate of dissolution was filed by Jero. Said certificate was signed by its sole stockholder, the Trust Fund, by all of its five trustees. The certificate of dissolution was issued by the Secretary of State of the State of New York on January 25, 1957. All assets of the corporation, including the aforesaid copyright and any rights that said corporation had or may have had in the letters, correspondence and writings of Julius and Ethel Rosenberg were thereby conveyed and assigned to the Trust Fund.

13. The Trust Fund, under its terms and by the powers vested with the trustees, was terminated on June 20, 1968 and all of the assets of the Trust Fund were given, conveyed and assigned to the plaintiffs herein. Since that time, to reflect the above, the Trust Fund and Jero have duly assigned, transferred and set over, in writing, all copyright interests, including the specific copyright referred to hereinabove and any related rights pertaining to said copyright, all right, title and interest in and to said copyright, and any other copyright interest based thereon, and all renewals and extensions thereof that may be secured now or in the future, and any and all other rights relating to the works encompassed by the said copyright, and any and all rights in and to all letters and correspondence of the Rosenbergs, and including, but not limited to, any and all causes of action theretofore accrued in favor of Jero and the Trust Fund for infringement of and damages to the aforesaid rights and copyrights, to the plaintiffs herein, and constituting and appointing the plaintiffs herein as lawful attorneys-in-fact of the aforesaid assignors with all powers and rights held by them. Said assignment is recorded under date of September 9, 1973 in Volume 1489 of the Copyright Register at pages 342-348, 349-355 and 356-362.

14. Since June 20, 1968, the plaintiffs have been and still are the sole proprietors of all right, title and

interest in and to the copyrighted book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG. The plaintiffs have been and are the sole proprietors of all right, title and interest in and to the contents of such book published under the title aforesaid, published under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG (1954) and published under other titles.

15. Defendant Nizer wrote a book entitled THE IMPLOSION CONSPIRACY, and defendants Doubleday and Nizer, acting in concert and pursuant to agreement, published, printed, distributed, sold and placed upon the market in every state of the United States, and upon information and belief, throughout the world, the aforesaid book, and included therein material from plaintiffs' copyrighted book and contents and thus have infringed upon the copyright of the plaintiffs.

16. Some time in or about April 1973, defendants Nizer, Doubleday and Fawcett entered into a contract for the publication of THE IMPLOSION CONSPIRACY in paperback form in every state of the United States, and upon information and belief, throughout the world, said paperback to contain the complete text of the hard-cover edition of THE IMPLOSION CONSPIRACY thereby to contain all the material copied and wrongfully appropriated by said defendants from plaintiffs as aforesaid.

17. A copy of plaintiffs' copyrighted book is attached hereto as Exhibit B, and a copy of defendants Nizer and Doubleday's hard-cover edition of the infringing book is attached hereto as Exhibit C. The plaintiffs have notified in writing the defendants Nizer and Doubleday that they have been and are infringing upon the copyright of the plaintiffs, and defendants have nevertheless continued to infringe upon the copyright. Attached hereto as Exhibit D is the notice to defendant Doubleday dated May 10, 1973, and attached hereto as Exhibit E is the notice to defendant Nizer dated May 10, 1973.

18. The letters dated May 10, 1973 to defendants Doubleday and Nizer and the contents thereof and the claim of the plaintiffs herein were given co-defendant Fawcett after the delivery of the aforesaid letters to defendants Doubleday and Nizer.

19. From January 1973 and continuously since then, defendants Nizer and Doubleday have been publishing, selling and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY and have been using the copyrighted material of the plaintiffs infringed upon as a means of promoting and selling the book, and have been disseminating the aforesaid copyrighted material and holding themselves out as owners and possessors of the aforesaid copyrighted material and the letters of

plaintiffs' parents, although defendants Nizer and Doubleday knew that they neither controlled, possessed nor had any authority to use in THE IMPLOSION CONSPIRACY or in any other form the aforesaid copyrighted material.

20. After publication of THE IMPLOSION CONSPIRACY on February 9, 1973, the plaintiffs in June 1973 instituted an action in the United States District Court for the Southern District of New York against the said defendants Nizer and Doubleday seeking, inter alia, temporary and permanent injunctive relief and damages.

21. Thereafter, on or about December 7, 1973, plaintiffs became aware that Nizer and Doubleday, or both, had entered into an agreement or arrangement with the defendant Fawcett herein, which provided, inter alia, for publication and distribution by Fawcett of a paperback edition of THE IMPLOSION CONSPIRACY.

22. On December 7, 1973, the plaintiffs wrote to the defendant Fawcett by certified mail, return receipt requested, requesting that it cease and desist from the printing, publication or distribution of the contemplated paperback edition of THE IMPLOSION CONSPIRACY. A copy of that communication is attached hereto as Exhibit F.

23. Fawcett had not, prior to the date of this complaint replied to said communication dated December 7, 1973

and had failed to apprise the plaintiffs of its intentions with respect to the publication and distribution of a paperback edition of THE IMPLOSION CONSPIRACY although fully informed of the plaintiffs' claims that publication and distribution of such an edition would infringe upon plaintiffs' copyright.

24. Fawcett with the knowledge, approval, consent and aid of Nizer and Doubleday caused advertisements to be inserted in trade publications such as Publishers Weekly and elsewhere announcing publication of the paperback edition of THE IMPLOSION CONSPIRACY by Louis Nizer for some time in March 1974 in a first printing of 800,000 copies, and threatened to sell and market such edition throughout the United States and throughout the world.

25. By reason of the threatened wrongful acts of the defendant Fawcett individually and in concert with defendants Doubleday and Nizer, the plaintiffs instituted an action in the United States District Court for the District of Connecticut, bearing Docket #B-74-73 against defendant Fawcett on or about March 6, 1974 which complaint was amended on March 19, 1974, wherein a timely demand for a jury trial was duly made by the plaintiffs herein. Said demand is repeated and incorporated in this action

26. Prior to the publication by Fawcett of the paperback edition of THE IMPLOSION CONSPIRACY late in February 1974,

Fawcett had notice and knowledge of all of the contents of the pleadings and the papers submitted by the plaintiffs in this action instituted on June 19, 1973. Each of the defendants Doubleday, Fawcett and Nizer had knowledge and notice of the existence of plaintiffs' copyright and the claims of the plaintiffs with respect thereto. Notwithstanding such notice and knowledge, all of the defendants individually and in concert, wilfully, knowingly, wrongfully and maliciously published said paperback edition in February 1974 and commenced to makret, sell and distribute it in great quantities throughout the United States and throughout the world, thereby wilfully, knowingly and maliciously infringing upon plaintiffs' copyright property. A copy of the defendant Fawcett's paperback edition of the book THE IMPLOSION CONSPIRACY is attached hereto as Exhibit G.

27. All of defendants acting individually and in concert with each other and having full notice and knowledge of plaintiffs' claim prior to the publication of the paperback edition of THE IMPLOSION CONSPIRACY which contains the complete text of the original hard-cover edition published by Doubleday, made no attempt to obtain permission from the plaintiffs to publish, in whole or in part, any of the copyrighted letters although they were aware of plaintiffs' ownership of the statutory copyright to such letters and plain-

tiffs' claim by reason of the public copyright notice since June 1953 and specific notice given by plaintiffs to all the defendants since May 1973.

28. Doubleday and Nizer, prior to the printing, publication, distribution and sale of the hard-cover edition of THE IMPLOSION CONSPIRACY, and Doubleday, Fawcett and Nizer, prior to the printing, publication, sale and distribution of the aforesaid paperback edition of THE IMPLOSION CONSPIRACY made no attempt to investigate or engage in any research on the copyright ownership of the Rosenberg letters infringed upon. The defendants printed, published, distributed and sold said books even though they had been advised prior to the publication of the aforesaid hard-cover edition of the book and prior to the printing, publication, distribution and sale of the paperback edition of the book, of plaintiffs' rights and ownership of the copyright.

29. The aforesaid book THE IMPLOSION CONSPIRACY is not a scholarly or accurate work nor is the same a truthful careful, honest or accurate work reflecting what transpired in the Rosenberg-Sobell case in and out of the courts and of the events that occurred, and the plaintiffs' copyright property is so used in a false, inaccurate and distorted context as to alter the meaning and import of the copyrighted writings.

30. The wrongful and unlawful use and appropriation

of such copyrighted letters and portions thereof was done knowingly by each and all of the defendants, recklessly and in wanton disregard of plaintiffs' property rights, and the defendants so maliciously used and infringed upon the aforesaid copyrighted material as to damage and adversely affect plaintiffs' exclusive rights in the aforesaid copyright material. The defendants and each of them have wrongfully exploited, and sought to exploit and misuse, the copyrighted material in a work the defendants knew to contain false, inaccurate and distorted and fictitious writings, all to the damage of plaintiffs' property.

31. As a result of the acts complained of hereinabove, defendants and each of them, individually and in concert with each other, have been wrongfully using the copyrighted material of the plaintiffs and have engaged in unfair trade practices, unfair competition and other frauds and deceits, all to the injury of plaintiffs' copyrighted material.

COUNT II

32. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 31 of the Complaint with the same force and effect as if fully set forth herein.

33. The matter in controversy exclusive of interest

and costs exceeds Ten Thousand ($10,000.00) Dollars, and this Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a).

34. In THE IMPLOSION CONSPIRACY, Nizer represents that as a legal scholar he has studied and knows each and every part of the case in which plaintiffs' parents were involved; that he studied all of the legal proceedings and accurately sets them forth in the book in a detailed, factual and objective fashion, using the same standards one would use as "a critique for a law review"; that in addition to engaging in such research of the legal aspects of the case he had personally acquired information from "every person I could find who touched their [the Rosenbergs'] lives or deaths, as if I were a reporter on a Pulitzer Prize mission". Nizer held and holds himself out as having knowledge of all the events and conversations not reflected in legal proceedings or records, about the plaintiffs themselves and their parents, and the attitudes and feelings of the plaintiffs and their parents towards each other, as well as the relationship of the plaintiffs and their parents with their parents' attorney, members of their immediate family, and organizations and individuals who came to the aid of plaintiffs and their parents.

35. Nizer relates in THE IMPLOSION CONSPIRACY purported statements, conversations and events involving the plaintiffs,

their parents and others. Nizer purports to set forth in such alleged statements, conversations and descriptions of events the motives of the plaintiffs' parents in regard to such alleged events, conversations and statements and as they pertained to the plaintiffs herein, and the plaintiffs' reactions thereto.

36. Nizer writings in THE IMPLOSION CONSPIRACY are false, fictitious and distorted regarding the plaintiffs themselves and in relation to their parents and family, and other individuals, and in so writing Nizer created a false, fictitious and distorted portrayal of the plaintiffs. Nizer by false, fictitious and distorted writings of conversations and events involving the plaintiffs cast the plaintiffs individually and in their relationship with their parents and others in a false, misleading and deceptive light. Nizer sought by these false, distorted and fictitious writings to establish falsely in the minds of readers of the book that the parents of the plaintiffs had no true love or affection for the plaintiffs; that the plaintiffs' parents were prepared to and did in fact use and manipulate the plaintiffs, in concert with others, for various illegal and nefarious purposes; that the Rosenbergs were prepared to and did in fact desert and reject the plaintiffs, and in furtherance thereof the Rosenbergs deliberately made themselves martyrs and wrongfully per-

mitted themselves to be executed. By these false, distorted and fictitious writings the defendant Nizer sought to establish in the mind of the reader that the plaintiffs believed Nizer's description of their parents and that the plaintiffs rejected and disassociated themselves from their parents and their parents' beliefs and that, freed of their parents by the execution they chose a contrary way of life from that of their parents.

37. In said hard-cover and paperback editions of the book, defendants, in order to deceive the reader and impress the public with the authenticity and credibility of the above described writings and to falsely impress the reader with the accuracy of the aforesaid book and its entire contents, used, copied and excerpted substantial portions of the copyrighted material hereinbefore referred to and used such copyright material along with false, fictitious and distorted writings in such a manner as to alter the meaning and import of the copyright material, by chronologically misplacing the correspondence in the text of the book, interlarding such false, fictitious and distorted writings so as to alter and destroy the correspondence and their import and cast a false light upon the plaintiffs. Doubleday, Fawcett and Nizer knew of the false, fictitious and distorted writings about the plaintiffs as referred to above, and each and all of the

defendants knew prior to the printing, distribution and sale of the book in hard cover and paperback edition that such writings were false and malicious; that such writings were in reckless disregard of the truth; that such writings falsely portrayed and described the plaintiffs and cast them in a false light and were written in wanton and reckless disregard of plaintiffs' rights.

38. Each and all of the defendants were advised of the false, fictitious and distorted writings and they had full notice and knowledge thereof, but nevertheless persisted in the printing, publication, distribution and sale of the book after such notice and knowledge as well as after the claims of the plaintiffs were brought to their attention, and wilfully failed and refused to correct such false, fictitious and distorted writings.

39. The defendants, in writing, printing, publishing, distributing and selling the aforesaid book did so maliciously, in bad faith and recklessly and wantonly disregarded and injured the plaintiffs' rights, including the right of privacy.

40. Notwithstanding the public attention focused on the Rosenberg-Sobell case from the time of plaintiffs' parents' arrest, in 1950 when the plaintiffs were infants 3 and 7 years of age, to the date of their parents' execution in June 1953, the plaintiffs were shielded by their parents and custodians

from public notoriety and protected from public scrutiny. Neither plaintiffs nor their custodians permitted plaintiffs to be thrust into the vortex of their parents' case; nor did the plaintiffs voluntarily engage the public's attention to themselves. From the moment of plaintiffs' parents' execution (plaintiffs then 6 and 10 years of age), their custodians actively took further steps to immunize plaintiffs from public scrutiny and attention and from public identification and public association with their natural parents. The plaintiffs thus led their lives up to the time of the publication of defendants' book in 1973.

41. The defendants' unlawful assault upon plaintiffs' privacy, upon their private lives, the holding of plaintiffs up to ridicule, embarrassment, shame and pity, and casting the plaintiffs in a false light as described in this complaint forced and compelled plaintiffs to respond publicly to defend their good name, honor and reputation as well as that of their present families.

42. The defendants and each of them knew that the plaintiffs were private individuals who lived a private, non-public life. Notwithstanding that fact, the defendants and each of them knowingly printed, published, distributed and sold the aforesaid books containing false, fictitious and distorted writings about the plaintiffs as to their most personal

and intimate affairs and feelings, attitudes and activities, with full knowledge of the falsity of the writings and in reckless disregard of the truth and with the malicious intent of wantonly and recklessly disregarding the rights of the plaintiffs, all causing the plaintiffs damage.

43. By reason of the foregoing, the writing of offensive and untrue statements about the plaintiffs, the plaintiffs have been held up to ridicule, embarrassment and humiliation; injury has been caused to them and their immediate family and to their capacity to function as citizens in their present and future employment and professional activities and in their relationship to others now and in the future, all to the great damage of the plaintiffs; and the same constitutes a malicious and wrongful invasion of plaintiffs' privacy and their right to be left alone.

44. The defendants and each and every one of them wilfully and knowingly failed to investigate the truth or falsity of the writings and made no reasonable search for information even though such information was available to them.

45. The defendants and each of them knew that the writings in the books aforesaid extracted writings from other sources which the defendants knew to be false and fictitious.

46. Each and every one of the defendants knowingly, wilfully and maliciously engaged in the acts complained of to

the injury of the pl .tiffs, with full knowledge of the false, distorted and fictitious nature of the writings, and that such a writing was a deceit practiced upon the plaintiffs and the public at large so as to enhance the commercial gains of the defendants at the cost and injury to the plaintiffs.

47. All of the defendants knew that the writing complained of projected a false and misleading picture and portrayal of the plaintiffs individually and in their relation with their parents, and incorporated in the text of the aforesaid books writings and photographs which would enable the public tc identify the plaintiffs, all serving to invade the privacty of the plaintiffs and their right to be left alone.

48. By reason of the above, the defendants have held up the plaintiffs to ridicule and embarrassment and have invaded plaintiffs' privacy and caused injury to the plaintiffs. By reason of the above, the plaintiffs are entitled to compensatory damages in the sum of Two Million ($2,000,000.00) Dollars for damages suffered as a result of the wrongful and malicious conduct of the defendants, and punitive damages against the defendants in the sum of Two Million ($2,000,000.00) Dollars.

COUNT III

49. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 31 and in Paragraphs

33 through 48 of the Complaint with the same force and effect as if fully set forth herein.

50. The plaintiffs, in addition to being the sole owners of the copyrighted property referred to hereinabove, are also the sole owners of all of the writings and correspondence of their parents, Ethel and Julius Rosenberg, which have not heretofore been published or disseminated. The plaintiffs intended and intend to publish and copyright said writings of their parents not heretofore published and copyrighted and intended and intend to do the same in connection with the aforesaid copyrighted material.

51. As a result of the conduct of the defendants complained of hereinabove, the plaintiffs' property, consisting of the writings of their parents, Julius and Ethel Rosenberg, not heretofore published or copyrighted, have been damaged and impaired and by reason thereof plaintiffs have suffered damages in the amount of One Million ($1,000,000.00) Dollars.

WHEREFORE, plaintiffs pray that this Court enter orders and judgments granting the following relief:

COUNT I

(1) That defendants, their agents, attorneys and employees, and those acting in their behalf and in concert with them, be enjoined, during the pendency of this action

and permanently, from infringing said copyrights of plaintiffs in any manner and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled THE IMPLOSION CONSPIRACY;

(2) That the defendants be required to deliver up to be impounded during the pendency of this action all copies of said book entitled THE IMPLOSION CONSPIRACY in their possession or under their control, and to deliver up for destruction all infringing copies and all plates, moulds and other matter for making such infringing copies, until all parts of the book containing the copyrighted material and the letters of Ethel and Julius Rosenberg or any portions thereof and reference thereto are removed, and that such pages and portions thereof removed from the book be destroyed;

(3) That defendants be required to deliver up to be impounded during the pendency of this action all promotional and advertising material used by the defendants or by others in their behalf in promoting the sale of the book THE IMPLOSION CONSPIRACY which contain any references, directly or indirectly, to the letters of Ethel and Julius Rosenberg, and the aforesaid copyrighted material of the plaintiffs;

(4) That defendants be directed to delete and remove from all copies of the book in the process of being printed, reproduced or published and all copies heretofore printed,

reproduced and published all of the copyrighted writings of the plaintiffs and any references thereto, and that defendants deliver up to be impounded during the pendency of this action such deleted and removed pages and portions thereof;

(5) That the defendants be required to pay to plaintiffs such damages as plaintiffs have sustained in consequence of defendants' infringements of said copyrights and said unfair trade practices and unfair competition, and to account for (a) all gains, profits and advantages derived by defendants by said trade practices and unfair competition and (b) all gains, profits and advantages derived by defendants by their infringements of plaintiffs' copyright, and such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(6) That defendants pay to plaintiffs the cost of this action and reasonable attorneys fees to be allowed to the plaintiffs by this Court;

COUNT II

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of Two Million $2,000,000.00) Dollars for compensatory damages and Two Million ($2,000,000.00) Dollars for punitive damages;

COUNT III

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of One Million Five Hundred Thousand ($1,500,000.00) Dollars;

That plaintiffs have such other and further relief as is just in the premises.

New York, N.Y.
January 15, 1975

MARSHALL PERLIN
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1886

Of Counsel:

Samuel Gruber
Max R. Millman

EXHIBIT A
(Annexed to foregoing Supplemental Complaint)

Certificate of Registration

(Heretofore reproduced at pA-18)

EXHIBIT B

DEATH HOUSE LETTERS OF ETHEL
AND JULIUS ROSENBERG

Published by Gero Publishing Company, Inc.

(to be supplied upon request)

EXHIBIT C

THE IMPLOSION CONSPIRACY
BY LOUIS NIZER

Published by Doubleday & Company, Inc.

(to be supplied upon request)

EXHIBIT D
(Annexed to foregoing Supplemental Complaint)

Notice to defendant Doubleday & Company, Inc., by Marshall Perlin

(Heretofore reproduced at pp.A-19--A-24)

EXHIBIT E

(Annexed to foregoing Supplemental Complaint)

Notice to defendant Louis Nizer by Marshall Perlin

(Heretofore reproduced at pp. A-25 to A-29)

EXHIBIT F
(Annexed to foregoing Supplemental Complaint)

Notice to defendant Fawcett Publications, Inc., by Marshall Perlin

MARSHALL PERLIN
ATTORNEY AT LAW
36 WEST 44TH STREET
NEW YORK, N. Y. 10036

MILTON H. FRIEDMAN (212) 661-1886

December 7, 1973

President's Office
Fawcett Publications, Inc.
Fawcett Place
Greenwich, Connecticut

Re: THE IMPLOSION CONSPIRACY
by Louis Nizer

Gentlemen:

It has just been brought to my attention that your company is contemplating publishing and distributing a paperback edition of the above book which has previously been published by Doubleday & Company, Inc.

For your attention I enclose herewith a letter I had previously written to Doubleday & Company, Inc. on May 10, 1973. I also enclose a copy of a complaint in an action which has been instituted by my clients, Michael Meeropol and Robert Meeropol, children of Ethel and Julius Rosenberg, for your attention. That action is now pending in the United States District Court for the Southern District of New York bearing Index No. 73 Civ. 2720 (HRT).

Were you to publish the above book, your action too would be in violation of my clients' rights, statutory and otherwise.

Please take notice that you are asked to cease and desist from the printing, publication or distribution of the book since such action would constitute a repetition and expansion of the wrongs already done for which you would be fully accountable to my clients.

I should appreciate hearing from you upon receipt of this letter with enclosures and further your advising me whether the information I have previously received of your plans with regards to publication of the book is accurate. If so, whether you will comply with the demand made herein.

If you should have any questions, I should appreciate hearing from you forthwith.

Very truly yours,

Marshall Perlin

MP:ln
Enclosures

CERTIFIED MAIL RETURN RECEIPT REQUESTED

EXHIBIT G

THE IMPLOSION CONSPIRACY
BY LOUIS NIZER

Published by Fawcett Publications, Inc.

(to be supplied upon request)

PLAINTIFF'S DEMAND FOR JURY TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL,	:	
Plaintiffs	:	
-against-	:	DEMAND FOR JURY TRIAL
LOUIS NIZER, DOUBLEDAY & COMPANY, INC., and FAWCETT PUBLICATIONS, INC.,	:	73 Civ. 2720 (HRT)
Defendants	:	

PLEASE TAKE NOTICE that the plaintiffs demand trial by jury in this action.

1/15/75

Marshall Perlin
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1886

ANSWER TO THE SUPPLEMENTAL COMPLAINT

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, Plaintiffs, - against - LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC., Defendants.	73 Civ. 2720 (HRT) ANSWER TO THE SUPPLEMENTAL COMPLAINT

Defendant, Fawcett Publications, Inc. ("Fawcett"), by its attorneys, Satterlee & Stephens, for its answer to the supplemental complaint, alleges as follows:

AS TO COUNT I

FIRST: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 1.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph 2, except admits it is a Delaware corporation with its principal office and place of business in Greenwich, Connecticut and that it is authorized to do business in the State of New York and maintains an office in the City, County and State of New York and except that it alleges that it is without knowledge or information sufficient

to form a belief as to the truth of the allegations (1) that the plaintiffs are citizens of the Commonwealth of Massachusetts, (2) that the defendant, Louis Nizer ("Nizer"), is a citizen of the State of New York and has his principal place of business in the City, County and State of New York, and (3) that the defendant, Doubleday & Company, Inc. ("Doubleday"), is a corporation organized under the laws of the State of New York and has its principal place of business in the City, County and State of New York.

THIRD: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except that it admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. §34 and that sentences of death imposed upon them on or about April 5, 1951, by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York, on June 19, 1953.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, except denies that plaintiffs are "private" individuals and were not "public figures."

FIFTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of

each and every allegation contained in paragraph 15, except denies that it or defendants Doubleday and Nizer have infringed upon the copyright of the plaintiffs and except admits that THE IMPLOSION CONSPIRACY was written by defendant Nizer and published by defendant Doubleday pursuant to an agreement.

SIXTH: Denies each and every allegation contained in paragraph 16, except admits that in April 1973 it entered into an agreement with Doubleday whereby it obtained the exclusive right for the publication of THE IMPLOSION CONSPIRACY in paperback in every state of the United States.

SEVENTH: Denies each and every allegation contained in paragraph 17.

EIGHTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 19 and 21.

NINTH: Denies each and every allegation contained in paragraph 23.

TENTH: Admits each and every allegation contained in paragraph 24 except denies that it "threatened" to sell and market such edition throughout the United States and throughout the world and denies that Nizer "aid[ed]" Fawcett in causing advertisements to be inserted.

ELEVENTH: Denies each and every allegation contained

in paragraph 25 except admits that plaintiffs instituted the action against Fawcett in the United States District Court for the District of Connecticut.

TWELFTH: Denies each and every allegation contained in paragraph 26.

THIRTEENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 27 and 28 as they apply to Doubleday and Nizer and deny same as they apply to Fawcett.

FOURTEENTH: Denies each and every allegation contained in paragraph 29, 30 and 31.

AS TO COUNT II

FIFTEENTH: With respect to paragraph 32, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 31 with the same force and effect as if fully set forth herein.

SIXTEENTH: Denies each and every allegation contained in paragraph 33 except admits that plaintiffs allege that the matter in controversy exceeds the sum of $10,000 and that this Court has jurisdiction pursuant to 28 USC §1332(1).

SEVENTEENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 34 and 35.

EIGHTEENTH: Denies each and every allegation contained in paragraphs 36, 37, 38 and 39.

NINETEENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 40 except affirmatively avers that plaintiffs are public figures for purposes of the First Amendment defenses afforded publishers, authors and all citizens in libel and invasion of privacy actions.

TWENTIETH: Denies each and every allegation contained in paragraphs 41, 42, 43, 44, 45, 46, 47, and 48.

AS TO COUNT III

TWENTY-FIRST: With respect to paragraph 49, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 31 and 33 through 48 with the same force and effect as if fully set forth herein.

TWENTY-SECOND: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50.

TWENTY-THIRD: Denies each and every allegation contained in paragraph 51.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO COUNTS ONE, TWO AND THREE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-FOURTH: The complaint fails to state a claim against Fawcett upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-FIFTH: Any utilization by defendant Fawcett of material from the DEATH HOUSE LETTERS as to which a valid copyright may exist amounted to a fair use thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO COUNTS ONE AND THREE DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-SIXTH: The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-SEVENTH: Consent to the use by defendants of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-EIGHTH: The material complained of as infringed by defendant Fawcett, or a substantial portion thereof, is in the public domain.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

TWENTY-NINTH: Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated

by virtue of the offering for sale in the United States of an English language edition containing the alleged copyright material in violation of the Copyright Law of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO COUNT ONE, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

THIRTIETH: The plaintiffs are guilty of laches and come into Court with unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO COUNT TWO, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

THIRTY-FIRST: THE IMPLOSION CONSPIRACY was written by defendant, Louis Nizer, a famous trial lawyer of national reputation, and an author of a number of literary works which, generally speaking, have been received with considerable acclaim both by literary critics and the reading public. Mr. Nizer's MY LIFE IN COURT, THE JURY RETURNS, AN ANALYSIS AND COMMENTARY ON THE OFFICIAL WARREN COMMISSION REPORT -- as was THE IMPLOSION CONSPIRACY -- were published in the hard cover edition by defendant Doubleday and in the paperback form by defendant Fawcett. In the course of its dealings with defendant Doubleday over many years, relative to publication in paperback form of literary works which were originally published in hard cover by defendant Doubleday, defendant Fawcett has formed a high opinion of defendant Doubleday's reliability as a publisher of the highest standards.

THE IMPLOSION CONSPIRACY, upon information and

belief, is a true account of a trial of an indictment handed down in the United States District Court for the Southern District of New York and the resulting verdict and sentencing of Julius and Ethel Rosenberg, charging them with passing to Soviet Russia the secrets of the device that triggered the atomic bomb. There was, attendant upon the trial, conviction and subsequent execution of Julius and Ethel Rosenberg, world-wide press coverage of these events and there has been ever since, continuing to the present time, substantial public interest in the aforesaid events and the individuals involved therewith. At the time of publication, and at all times thereafter, defendant Fawcett was informed that defendant Doubleday believed that all statements of fact contained in THE IMPLOSION CONSPIRACY were and are true and that any comment upon said facts by the author was fair and reasonable and, therefore, that in publishing THE IMPLOSION CONSPIRACY, in the hard cover edition, the defendant Doubleday conducted itself according to the usual practices then and now obtaining in the business of the publication of trade books. Based on the above, defendant Fawcett, in publishing the paperback edition of said book, was acting within the rights provided to it, as to all citizens, by the First Amendment to the Constitution of the United States. The context of the book consisted of matter the publication of which falls within the protection of the First Amendment to the Constitution of the United States.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE TO COUNT TWO, DEFENDANT FAWCETT ALLEGES UPON INFORMATION AND BELIEF

THIRTY-SECOND: This court has previously held that nothing contained in THE IMPLOSION CONSPIRACY libels plaintiffs or invades their privacy and that plaintifis were and are public figures and therefore the First Amendment privileges apply to all statements concerning plaintiffs contained in Fawcett's paperback edition of said book.

WHEREFORE, Fawcett demands judgment dismissing the plaintiffs' supplemental complaint herein, together with costs and disbursements, and for such other and further relief as may be just and proper.

Dated: New York, New York
January 31, 1975

SATTERLEE & STEPHENS

By _____
A Member of the Firm

Attorneys for Defendant
FAWCETT PUBLICATIONS, INC.
Office & P. O. Address
277 Park Avenue
New York, N. Y. 10017

OPINION OF H.R. TYLER, JR., U.S.D.J., DATED JULY 18, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,

Defendants.
----------X

FILED
U.S. DISTRICT COURT
JUL 19 9 54 AM '73
S.D. OF N.Y.

OPINION

73 Civ. 2720 HRT

#39686

MARSHALL PERLIN, ESQ., New York City, Attorney for plaintiffs.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, ESQS., New York City, by George Berger, Esq., Attorneys for defendant Louis Nizer.

SATTERLEE & STEPHENS, ESQS., New York City, by Robert M. Callagy, Esq., Attorneys for defendant Doubleday & Company, Inc.

TYLER, D.J.

By order to show cause filed on June 21, 1973, plaintiffs have moved for an order restraining defendants pendente lite

from infringing upon their claimed copyright in the letters of Julius and Ethel Rosenberg and from publishing, selling or disposing of copies of the book entitled The Implosion Conspiracy, written by the defendant Nizer and published by the defendant Doubleday & Company, Inc. ("Doubleday"). 17 U.S.C. §§101 and 112; Rule 65, F.R.Civ.P. The motion for temporary injunctive relief was heard by the court on June 29, 1973. For reasons to be discussed hereinafter, the motion is denied in all respects.

Plaintiffs are the natural children of Julius and Ethel Rosenberg, who were executed in June, 1953 after their trial for treason in this court. Their complaint, filed on or about the same day as the present motion, sets out three separate claims: (1) for statutory copyright infringement pursuant to 17 U.S.C. §101, with a prayer for permanent injunctive relief; (2) for damages of $1,000,000 for malicious defamation and invasion of plaintiffs' privacy through the publication of The Implosion Conspiracy; and (3) for money damages of $1,000,000 for common law infringement of and for injury to plaintiffs' property rights in unpublished and uncopyrighted works of their parents. Alleging diversity of citizenship, plaintiffs assert that this court has jurisdiction of the second and third claims pursuant to the provisions of 28 U.S.C. §1331. As plaintiffs

concede, however, their present motion is keyed entirely to the first or statutory copyright claim. In essence, it is charged that Nizer in his book quoted all or portions of some 29 letters of Ethel and Julius Rosenberg, which appeared in the book Death House Letters of Ethel and Julius Rosenberg, copyrighted in the United States in 1953 by the Jero Publishing Company, Inc. ("Jero").

Nizer and Doubleday contend, inter alia, that the challenged quotations constitute fair use of the material, that a significant part of the allegedly infringed material, if not all of it, is already in the public domain, that the plaintiffs are not the true copyright owners as asserted, and that they are barred by laches from bringing this action. Defendants also urge that a 1953 English edition of Death House Letters was offered for sale and sold in the United States, in violation of 17 U.S.C. §§10, 16, and 22.

Death House Letters was published on June 10, 1953 by Jero, which obtained a United States copyright registration number 96637, Class A, on June 24, 1953. Apparently by express agreement with Jero, Dennis Dobson in November, 1953 reprinted Letters in London under the title The Rosenberg Letters. In

the acknowledgement page of The Implosion Conspiracy, Mr. Nizer acknowledges that he used portions of the letters from this latter "Dobson edition".

The Implosion Conspiracy was first published in this country on February 9, 1973. To date, Doubleday has printed 100,000 hard cover copies, of which 85,000 have been sold to the trade. Thus, Doubleday has 15,000 copies remaining in inventory. Also, it appears that book clubs have sold and distributed about 40,000 copies. Pre-publication publicity was started as early as May, 1972, and Doubleday alleges without contradiction that it has expended $120,000 for advertising and incurred editorial, production and sales expenses totalling about $300,000.

The Implosion Conspiracy has enjoyed considerable popular success since its publication in February. In essence, it purports to be a factual but readable account of the trial and post-conviction legal proceedings in the celebrated Rosenberg case. A subordinate but nevertheless important theme of the author, as I understand his work, centers upon legal efforts of Emanuel Bloch and his total professional and emotional dedication to his clients, Julius and Ethel Rosenberg. Although the plaintiffs apparently claim otherwise, my reading of the

book indicates that by and large it is a sympathetic and sensitive account of the Rosenbergs' personal, political and legal problems during the years of the trial and post-conviction appeals.

The parties agree that Death House Letters has been out of publication for almost twenty years. There is no evidence that the Dobson edition has been available since 1967. One copy of the latter edition is available in the New York Public Library, apparently because of a gift to that institution by the late Emanuel Bloch. It is likely, however, that an occasional copy of Death House Letters might be found in book stores in New York City at the present time.

Turning to the use by defendants of all or portions of 29 letters of the Rosenbergs in The Implosion Conspiracy, it is to be noted that there has been considerable confusion in the parties' papers and briefs concerning the pages where the quotations appear. As I read the copy of The Implosion Conspiracy available to me, 1/ the pages differ markedly from the pages

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1/ Apparently, but not certainly, a book club edition.

submitted by plaintiffs and those by the defendants. Nevertheless, this confusion is one of detail only. There can be and are no differences in the actual quotations and where they appear by chapter in defendants' book. According to the pagination of my copy, the first quotation from a letter of the Rosenbergs appears in Chapter 37, at page 423. The other quoted references to the letters appear at the pages cited in the footnote below. 2/ From a quantative viewpoint, the quoted letters make up a very small portion of The Implosion Conspiracy.

It is important to trace carefully plaintiffs' allegations concerning the chain of title by which they lay claim to ownership of the original copyright issued by the United States Copyright Office for Death House Letters. As previously noted, plaintiffs are the sole issue and heirs of Julius and Ethel Rosenberg. They contend that when their parents composed and compiled their letters, they would deliver them to their lawyer, Emanuel Bloch, with instructions to him to turn the letters over to a corporation for publication and copyrighting, and to hold

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2/ Pp. 424, 428, 429, 430, 431, 433, 434, 443, 445, 446, 447, 450, 454, 455, 470, 471, 473, 474, 475, 507 and 508.

the same in trust for plaintiffs. As plaintiffs apparently concede, however, there is no written documentation of either delivery or instructions. In any event, Jero was organized as a New York corporation in April, 1953, and copyright registration number 96637 issued to it on June 24, 1953.

Plaintiffs also allege that on August 19, 1953, an indenture of trust was drafted appointing five trustees, including Mr. Bloch. This trust indenture came to be known as "The Rosenberg Children's Trust Fund" (hereinafter "the Fund"). It is asserted that the Fund took title to all of the stock of Jero. As far as can be determined, there is no documentary evidence of this stock transfer before the court.

On January 30, 1954, Mr. Bloch died and was succeeded as one of the five trustees by another New York lawyer, Gloria Agrin Josephson. Three years later, on January 25, 1957, a certificate of dissolution of Jero was issued by the Secretary of State for the State of New York; the assets of the corporation, including the copyright, passed by operation of law to the sole stockholder, the Fund. Thereafter, according to the complaint, the fund was terminated and its assets were assigned to plaintiffs. In a reply affidavit filed on the day of the

hearing of this motion, plaintiffs' counsel submitted to the court a copy of a purported assignment from the Fund which was apparently dated on June 20, 1973 and was verified by the trustees who signed same on June 12 and 13 of this year.

In their moving papers, plaintiffs demand sweeping injunctive relief.- Specifically, they seek an order enjoining the defendants from infringing the copyright of plaintiffs in any manner and from selling or disposing of any copies of The Implosion Conspiracy; directing that defendants deliver up for impounding all copies of the book under their control, all plates, molds and other printing materials, and all advertising and promotional materials which include any references to the letters of Ethel and Julius Rosenberg. At oral argument, however, plaintiffs' counsel took what he styled to be a more realistic approach and requested delivery only of the 15,000 inventory hard cover copies from the warehouse of Doubleday, and the enjoining of any possible paperback publication, or sale of any movie or television rights to the book by the defendants. 3/

3/ In fairness to plaintiffs, they likely should be understood as also seeking to restrain any further advertisements of The Implosion Conspiracy which refer to or quote from any of the Rosenberg letters. Heretofore, the front cover flap has referred to "love letters between" the Rosenbergs. Plaintiffs also complain of three book reviews which refer to the letters, but there is no proof that defendants controlled the publication and substance of these reviews.

Plaintiffs' counsel argued that once this court is satisfied that plaintiffs have made out a prima facie case that the statutory copyright exists and has been assigned to them, and further that Nizer and Doubleday have quoted portions of the letters, such evidence is sufficient to permit and, indeed, require the issuance of an injunction pendente lite as prayed. To the extent that plaintiffs' counsel contends that this court should ignore traditional equitable principles in determining whether or not to grant the drastic relief of a preliminary injunction, I cannot agree. It is true that §§101 and 112 of the Copyright Act, for example, talk specifically about the power of a federal court to issue injunctions in copyright cases. It does not follow from this fact, however, that the court can grant such relief on the comparatively meager showing as advocated by plaintiffs. See, e.g., Roosmont Enterprises, Inc. v. Random House Inc., 366 F.2d 303 (2d Cir. 1966) cert. den. 385 U.S. 1009 (1967). Generally speaking, the law is clear that a court in a copyright case must consider likelihood of success, irreparable harm, clean hands and other such classic equitable factors. Ibid. at page 306.

The Issue of Plaintiffs' Ownership of the Statutory Copyright

As heretofore indicated, it can be said that the "chain of title" in the copyright is not as perfectly and formally established by documentation as one might wish. But at least for the purposes of this motion, plaintiffs, in my view, have made a sufficient offer of proof that they are the equitable, if not legal, owners of the statutory claim. Hence, I conclude that they have standing to make this motion.

The Fair Use Defense

Nonetheless, upon evaluation of the entire record before the court, I conclude that the plaintiffs cannot meet their burden of establishing likelihood of success in this case. For this reason, and because a balancing of potential harm to plaintiffs and defendants tips against plaintiffs, I conclude that temporary injunctive relief must be denied in all respects.

A major reason for concluding that the plaintiffs have fallen short of showing likelihood of success is the fair use defense raised by the defendants. "Fair use" is a privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding

the monopoly granted to the owner..." Ball, Copyright and Literary Property, 260 (1944). As it has been put by the Court of Appeals for this circuit, "courts in passing upon particular claims of infringement must occasionally subordinate the copyright holder's interest in a maximum financial return to the greater public interest in the development of art, science and industry". Berlin v. E.C. Publications, Inc., 329 F.2d 541 (2d Cir. 1964). Whether or not this greater public interest is to be favored in a particular case turns to a large degree on the nature of the materials which are alleged to be copyrighted and infringed. Put differently, this issue is sometimes phrased as "whether their distribution would serve the public interest in the free dissemination of information and whether their preparation requires some use of prior materials dealing with the same subject matter." Rosemont, supra at page 307; see also, Time Incorporated v. Bernard Geis Associates, 293 F. Supp. 130 (S.D.N.Y. 1968) (Wyatt, J.).

Consideration of the original volume entitled Death House Letters and more importantly the contents of The Implosion Conspiracy, suggests that this test is more than adequately met. In other words, the continuing interest in and importance of

the celebrated Rosenberg case probably entitles the defendants' new book to invocation of the fair use doctrine. To illustrate the point, the "New York Times" recently published an article recognizing the 20th anniversary of the death of Julius and Ethel Rosenberg, adverting to the continuing public interest in their case. I further note that, ironically, this very court house is adjacent to Foley Square where earlier this month, and in June of other years, demonstrations took place in memory of the Rosenbergs and their execution.

Plainly, as defendants concede, The Implosion Conspiracy was designed and has been sold as a trade book for commercial gain. It is likely that the sales to date have already established this book as a successful "money-maker" if not a "best seller". Doubtless, as plaintiffs' counsel suggests, it may have continuing if not greater success in paperback editions. Still further, it is likely to be, if it has not already been, the subject of a contract for a movie or television screen play, or both. The book's commercial success, however, is no reason to conclude that it should be denied the benefits of the fair use doctrine. As I read The Implosion Conspiracy, the quotations

were used with discretion and with demonstrable purpose to illustrate, from an historical and legal point of view, the post-conviction appeals and petitions for clemency which were filed by and for Mr. and Mrs. Rosenberg. The relevant portions of the book almost certainly will provide reasonably valuable source material for future historians, biographers and social scientists. Indeed, the conceded fact that the letters have not been out of publication here and abroad for almost twenty years, in my view, tends to enhance the likelihood that defendants can prove fair use of the letters in question. Thus, defendants are likely to prove that their book is a serious, full and [illegible] readable account of what was a trial of great historical interest; that resort to quotations of certain of the Rosenbergs' letters is important to any serious book on their trial; and that on there is little possibility of injury to the plaintiffs. Indeed, defendants may be able to show that their book has enhanced [illegible] the value of plaintiffs' copyright. See Time Incorporated v. Bernard Geis Associates, supra. [illegible] of the [illegible] in the public domain. In sum, this [illegible]

The Public Domain Claim

[illegible] As a practical matter, this court's resolution of the fair use controversy effectively demolishes any likelihood of success

in respect to the first stated claim of plaintiffs' complaint upon which this motion is squarely predicated. Nevertheless, it may be useful to point out other infirmities respecting plaintiffs' first stated count or claim in their complaint. The Rosenberg letters quoted in the Nizer book range in dates from October 28, 1950 to June 19, 1953. Of the 29 letters here involved, defendants have offered evidence suggesting that 5 to 7 thereof may have been in the public domain for many years. Defendants' documentary evidence also suggests that at least portions of four additional letters have been published in such journals as the "National Guardian" subsequent to June, 1953 when Death House Letters was copyrighted and first published. Consequently, defense counsel argue plausibly that with time to investigate, they may well be able to establish that more if not all of the letters are in the public domain. As a practical matter, indeed, a casual reader of the quotations from the letters appearing from Chapter 37 to the conclusion of defendants' book, might infer from their language that some of them were intended to be in the public domain. In sum, the present record, though incomplete, strongly suggests that plaintiffs may have serious difficulty in meeting the defense that all of their parents' letters are in the public domain

and thus entitled to free usage by the defendants in The Implosion Conspiracy.

Laches

Not surprisingly, defendants also argue that plaintiffs were guilty of laches in filing this suit. In brief, the argument is that there has been substantial public notice since the summer of 1972 that Mr. Nizer was to publish a book regarding the celebrated Rosenberg case. In any event, the argument continues, plaintiffs should have known shortly after February 9 of this year that this widely publicized book refers to some of the Rosenbergs' letters. Thus, conclude defendants, plaintiffs were dilatory in commencing this suit as late as June 21, 1973. To this, plaintiffs' counsel rejoins that he only was retained in April, 1973 and normal preparations, investigations and the like kept him busy until June 21 preparing his complaint and the motion papers for plaintiffs. For present purposes at least, I am inclined to think that plaintiffs should prevail against the asserted equitable defense of laches.

Permission to Use

The record on this motion presents another factual issue, which is rather close and pertinent to the question of whether

or not preliminary injunctive relief should be granted. Mr. Nizer asserts in his affidavit opposing this motion that in the summer of 1972 he sought and obtained a meeting with Gloria Agrin Josephson who, as indicated, was and is the late Mr. Bloch's successor as a trustee of the Fund. According to Nizer, he and Ms. Josephson met in 1972 and during the course of the conference, he asked for and obtained from her, permission to refer to and quote some of the Death House Letters. Indeed, as Mr. Nizer recalls it, Ms. Josephson offered to loan to him for this purpose her copy of Death House Letters.

In reply, Ms. Josephson has submitted an affidavit denying that she gave any such permission, although she does admit the meeting. Further, however, Ms. Josephson appears to indicate that she suggested that Mr. Nizer would have no difficulty in obtaining permission to use and quote from the letters.

Though far from clear, the present situation suggests that there may have been an understanding, the nature of which reasonably and properly indicated to Mr. Nizer that he did have the approval of a representative of the plaintiffs to refer to and quote from the letters in a reasonable and pertinent matter. At a plenary trial, in other words, it is possible that defendants could prove such an understanding and agreement,

particularly in light of the conceded fact that the letters have been out of print to all practical extent and purposes for so many years.

Balancing of the Possibilities of Injury, Existing and Potential

Obviously, in deciding whether a preliminary injunction should issue, it is necessary to consider the question of irreparable harm to the parties. See Rosemont Enterprises Inc. v. Random House, Inc., supra, at pages 310-11. Plaintiffs do not claim that they have been deriving any material benefits from the copyrighted book Death House Letters. Indeed, one could infer from the passage of so many years that the plaintiffs have not contemplated any possibilities of gain from such rights as they have in the letters or that book. Moreover, there is absolutely no suggestion, let alone proof, that the publication of The Implosion Conspiracy has lessened the value of the letters of Julius and Ethel Rosenberg. Practically speaking, the only realistic inferences are to the contrary - i.e. that the defendants' book probably has been the only significant event that might enhance their value.

Finally, plaintiffs do not dispute the substantial investment that the defendants have in their book. There is no

suggestion, either, that the defendants are monetarily irresponsible or unable to satisfy any judgment for money damages that plaintiffs might possibly obtain in this case. Accordingly, it is concluded that the balancing of potential and existing harm favors defendants and not plaintiffs. See Life Music, Inc. v. Wonderland Music Co., 241 F. Supp. 653 (S.D.N.Y. 1965); Pocketbooks, Inc. v. Doll Publishing, 49 Misc. 2d 252, 267 N.Y.S. 2d 269 (Sup. Ct. N.Y. Co. 1966); Rosemont Enterprises Inc. v. Random House Inc., supra.

Defendants' Motion to Dismiss Plaintiffs' First Stated Claim

Earlier in this memorandum it was indicated that plaintiffs are unlikely to prove their first stated claim of statutory copyright infringement by reason of the appropriate defense of fair use. In their papers opposing plaintiffs' motion, defendants have suggested and indeed urged that the record is sufficient for this court to dismiss the first claim on this ground. But "fair use" would seem to be a function of all of the circumstances; and plaintiffs should have the opportunity to rebut the presumption that arises from the nature of the materials and the circumstances described herein. It is not altogether clear that letters stand on the same footing as

"historical facts", which are the product of research and in turn form the basis for subsequent works. See Rosemont, supra. And the relatively slight quantitative significance of the quotations perhaps overstates their qualitative impact. Defendant Nizer, moreover, is a lawyer; he knew about Death House Letters and its copyright, yet made only one somewhat ambiguous attempt to obtain permission to cite the letters in his book. Finally, although this is not stressed by the parties, it appears that defendant Doubleday published another book, Invitation to an Inquest. In the original version of that book, excerpts of certain of the Rosenberg letters appeared; but there is evidence that Doubleday would not permit such use unless written consent was obtained. Thus, it would seem that both defendants were well aware of the potential copyright infringement represented by quotations of the letters in The Implosion Conspiracy. Accordingly, defendants' motion to dismiss the first claim is denied without prejudice.

To summarize, then, the plaintiffs' motion for temporary injunctive relief is denied in all respects; further, the defendants' cross motion to dismiss the first stated claim in the complaint is denied without prejudice to renewal thereof upon an expanded record.

It is so ordered.

Dated: July 18, 1973

W. R. Tyler, Jr.
U.S.D.J.

DEFENDANT NIZER'S NOTICE OF MOTION DATED JANUARY 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MELNITOL and ROBERT MELNITOL, :

Plaintiffs, : NOTICE OF MOTION

-against- : 73 Civ. 2723 (HRT)

LOUIS NIZER and DOUBLEDAY & COMPANY, INC., :

Defendants. :

- -x

S I R S:

PLEASE TAKE NOTICE, that upon the affidavit of Louis Nizer, sworn to January 29, 1974, the affidavit of Kenneth McCormick, sworn to January 29, 1974, the complaint and answers herein, the interrogatories to plaintiffs dated August 9, 1973, the plaintiffs' answers thereto dated October 22, 1973, the Order of this Court dated January 14, 1974 directing further responsive answers and the plaintiffs' further responsive answers to said interrogatories dated January 16, 1974 and pursuant to Rule 56 FRCP, the undersigned will move this Court on the 15th day of February, 1974 at 2:15 o'clock in the afternoon or as soon thereafter as counsel can be heard in Room 2804 of the United States Courthouse, Foley Square, New York, New York for summary judgment dismissing the Second Count of the Complaint, and for such other and further relief as to this Court appears just and proper.

Dated: New York, New York
January 30 , 1974

Yours, etc.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON

s/ By: George Berger
A Member of the Firm

Attorneys for Defendant, Louis Nizer
477 Madison Avenue
New York, New York 10022
758-6700

SATTERLEE & STEPHENS

s/ By: Robert M. Callagy
A Member of the Firm
Attorneys for Defendant, Doubleday & Company, Inc.
277 Park Avenue
New York, New York 10017
826-6200

TO: MARSHALL PERLIN, ESQ.
Attorney for Plaintiffs
30 West 44th Street
New York, New York 10036
661-1856

STATEMENT PURSUANT TO GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, : STATEMENT PURSUANT TO GENERAL RULE 9(g)

-against- :

LOUIS NIZER and DOUBLEDAY & COMPANY, INC., :

Defendants. :

- -x

Defendants, for their statement pursuant to General Rule 9(g) of this Court and in support of their motion for summary judgment dismissing the Second Count of the Complaint, state that the following material facts are those as to which defendants' contend there exists no genuine issue to be tried:

1. Plaintiffs specify 77 pages or portions thereof, of defendants' book as the basis of the Second Count of the Complaint.

2. Forty-eight of those pages or portions make no mention of plaintiffs: They are: 2, 4, 5, 6, 9, 22, 24, 79, 81, 86, 94, 98, 99, 104, 105, 106, 126, 127, 150, 157, 158, 159, 161, 164, 165, 196, 198, 199, 222, 297, 365, 371, 393, 394, 395, 398, 403, 404, 411, 418, 419, 437, 439, 462, 488, 493, 494, 495.

3. Twenty-nine pages or portions do mention the plaintiffs, but they are not susceptible of any reading which is defamatory of plaintiffs. These pages are: 23, 80, 107, 242, 280, 366, 367, 369, 370, 396, 399, 400, 401, 402, 412, 413, 414, 415, 422, 423, 433, 434, 435, 436, 438, 440, 483, 487, 492.

4. The name "Meeropol" is not used in "The Implosion Conspiracy".

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON

s/ By: George Berger
A Member of the Firm

Attorneys for Defendant, Louis Nizer
477 Madison Avenue
New York, New York 10022
758-6700

SATTERLEE & STEPHENS

s/ By: Robert M. Callagy
A Member of the Firm

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TO: MARSHALL PERLIN, ESQ.
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
661-1886

AFFIDAVIT OF LOUIS NIZER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, Plaintiffs, - against - LOUIS NIZER and DOUBLEDAY & COMPANY, INC., Defendants.	73 Civ. 2720 HRT AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LOUIS NIZER, being duly sworn, deposes and says:

1. This affidavit is submitted in support of the motion of both defendants for partial summary judgment dismissing the second count of the complaint on the ground that there is no material issue of fact meriting a trial.

The Second Count and The Responses to Defendant's Interrogatories.

2. The second count of the complaint (¶¶ 19-28) pleads as a single count, what is really four separate claims -

a. Alleged libel of Michael Meeropol.

b. Alleged libel of Robert Meeropol.

c. Alleged invasion of privacy of Michael Meeropol.

d. Alleged invasion of privacy of Robert Meeropol.

3. In responding to interrogatory 10a (as revised in this Court's order dated January 14, 1974), the plaintiffs have specified 77 pages or portions of pages from my book upon which they each based those claims.

Libel

4. Although the complaint does not specifically claim that the plaintiffs were libeled by the defendants' book, it is an inference which plaintiffs may claim can be drawn from the language employed in the complaint. See plaintiffs' response to interrogatories 10d and e. (See also, the previous opinion of Court, 361 F. Supp. at 1065.)

A. Pages Specified By Plaintiffs, But On Which Plaintiffs Are Not Even Mentioned.

5. Of the 77 pages or portions of pages specified by plaintiffs, 48 contain absolutely no reference to the plaintiffs at all. They are pages 2, 4, 5, 6, 9, 22, 24, 79, 81, 86, 94, 98, 99, 104, 105, 106, 126, 127, 150, 157, 158, 159, 161, 164, 165, 196, 198, 199, 222, 297, 365, 371, 393, 394, 395, 398, 403, 404, 411, 418, 419, 437, 439, 462, 488,

493, 494, 495.

6. Thus, even if it was assumed that these 48 pages were false and defamatory in their references to others than the plaintiffs, no claim of libel or invasion of the plaintiffs' alleged right of privacy can be predicated thereon as a matter of law. (See Points I (a)(b)of the accompanying memorandum of law.)

B. Pages Specified By Plaintiffs, On Which Plaintiffs Are Mentioned By Their Former Names, But Which Do Not Defame Them.

7. Of the 29 remaining pages or portions of pages specified by plaintiffs, there are 25 pages which do mention the plaintiffs, or one of them. These pages are: 80, 107, 280, 369, 370, 396, 399, 400, 401, 402, 412, 413, 414, 415, 422, 423, 433, 434, 435, 436, 438, 440, 483, 487, 492. However, in each instance, the reference cannot be read in any manner which could be defamatory of plaintiffs, as a matter of law.

8. As shown in Point I(c)of the accompanying memorandum of law, plaintiffs similarly cannot predicate any claim thereupon.

C. The Three References To Plaintiffs' Emotional State As Children Are Not Libelous, Are Conceded To Be True And Are Privileged.

9. Of the 77 pages complained of, there are only

three references to plaintiffs' (or to Michael Rosenberg only) emotional state as children:

a. On page 23:

> "In 1943, a son, Michael, was born to them. Four years later, Robert was born. The children were extremely difficult. Ethel and Julius studied texts on child psychology to develop a relationship with them. Michael would throw a tantrum on the street and could not be controlled by either of his parents. They were mystified by this. It didn't occur to them that their political fanatacism had deprived their children of the warmth and intimacy which they insisted would come to the world if their theories prevailed. Blueprints for Utopia never take into account human frailties. That is why they are so alluring in print and so ineffectual in practice. The Rosenbergs had a microscopic illustration of this right in their own home and with their own flesh and blood. But they failed to perceive it."

b. On page 242:

> "Later when her son Michael was two and one-half years old, she took a course at the New School for Social Research in child psychology. This was an indirect revelation of the fact that even at that early age her son had shown neurotic tendencies. Somehow, the wholesome life which knits even under-privileged families in love had failed her."

c. On pages 366-67:

> "Ethel spoke up bitterly. 'I resented most the judge's comments about how we let down the children.

What does he know about our love for the children? What kind of animals does he think we are?'

"There was a reason for her special hurt. A completely outrageous accusation doesn't pain much. It can be ridiculed. Few believe it. More important, the victim doesn't, so he does not suffer from the recognition of the truth. But an accusation that is even half true rankles and festers. Julius, and particularly Ethel, never got over the judge's condemnation of them for 'sacrificing their children.' Even his death sentence did not make them hate him as much as his slur on them as parents. The reason was that they knew subconsciously, at least, that there was some validity to the accusation. They had failed their children even before their arrest. Although brimming with love, they had not communicated it sufficiently to Michael and Bobby to prevent their neurotic behavior. Hadn't their intense activity for a better Communist world deprived their children of a better home? A happy home, goes a proverb, is an early heaven. The Rosenbergs may have begun to suspect that in searching for a heaven for society, they had denied their children a heaven at home. Furthermore, their activities (even on the assumption that they were innocent of espionage) had involved them in a tragedy, not only to themselves, but to their children. Little wonder that Ethel kept harping on the judge's comment about the children. It had pierced the outer shell we all have to protect us against a complete lie. Half lies seep through such armor."

10. It is clear that in the context of my book

these passages cannot be read as defamatory of plaintiffs because as shown in Point I(c) of the accompanying memorandum of law, it is not defamatory today to say of someone, especially a child, that he had neurotic tendencies or displayed neurotic behavior. Indeed, in the context of this book, the explanation is conveyed that their behavior was due to environmental circumstances, not any venality on their own part.

11. Furthermore, any possible claim of defamation, however unfounded, is destroyed by my description of the plaintiffs on page 492:

> "Over the years they grew up to be fine young men. They graduated from college. Each became successful in his chosen enterprise. Both married and have children. They are normal, decent citizens living a happy life with affectionate relationships with their new parents and friends."

Thus, the only possible conclusion which can be drawn concerning the plaintiffs is that whatever psychological problems the children suffered in their youth, including the trauma from their parents' deaths, were overcome and that today: "They are normal, decent citizens living a happy life...."

12. It is not libelous to say that someone in his early youth was emotionally disturbed, but that now he is

healthy. See the authorities cited in Point I(c) of the accompanying memorandum of law.

13. An additional reason warranting summary judgment, is the truth of the statements complained of, as conceded by the plaintiffs themselves. Attached hereto as Exhibit A is a copy of an interview of plaintiffs in the November, 1973 issue of Ramparts magazine after this action was commenced. At pages 38 and 40 thereof, plaintiffs admitted:

> "since we were pretty troubled, we were often sassy." (emphasis added)
>
> * * *
>
> "Then they set up a home with my father's mother, and a registered nurse. When I got into her house, I was wild out of my mind, and my grandmother couldn't control me, and when the nurse tried to [control me], grandma interceded and finally drove the nurse away." (emphasis added)
>
> * * *
>
> "My aggression showed up in bad penmanship. My conduct was terrible. Grandma couldn't handle me by then." (emphasis added)
>
> * * *
>
> "I was a real wise guy," says Michael. 'I was given a thorough examination by Dr. Frederick Wertham in 1954, and he thought I was very close to being psychotic. I needed extremely careful, firm loving care, in as normal a situation as possible. I couldn't stand still for a minute. I never

> looked at anyone when I talked to them. I was vicious in terms of responding to any adults who crossed me. I was a fresh kid. I drove adults to distraction.'" (emphasis added)

14. Finally, aside from the demonstrated baselessness of plaintiffs' claims as a matter of law, it is clear that my comments are in any event privileged as a matter of law. As appears from the cases cited in Point II of the accompanying memorandum of law, the subject matter of my book is one of public interest and is immune under the First Amendment from any claim of libel because these passages were based upon information obtained through careful research, including even the sworn testimony of plaintiffs' father. (See 361 F. Supp. at 1068)

a. Thus, for example in his trial for conspiracy to commit espionage, which is the subject of the book, Julius Rosenberg testified:

> "A. Well, she [Miss Glassman] is a social worker and my oldest boy has been very emotionally disturbed for quite a number of years, and she used to work at the Jewish Board of Guardians, and I discussed the problem of my oldest boy with her.
>
> "Q. When did that discussion take place?
>
> "A. Almost every time I saw her.

"Q. As the result of those discussions, did you subject your boy to any treatment?

"A. Yes, we did.

"Q. Where?

"A. At the Jewish Board of Guardians." (Trial Transcript, p. 1195) (emphasis added)

A copy of that page of the transcript is annexed hereto as Exhibit B. What better information can an author have for the accuracy of his comments?

b. Another source (credited by me in the acknowledgement page in the front of my book) was, The Judgment of Julius and Ethel Rosenberg, by John Wexley, published by Cameron and Kahn in 1955.* Despite its complete support of the Rosenbergs' claimed innocence, this book also sets forth the neurotic behavior of the plaintiffs, at least after their parents' ordeal began:

"And finally, there was the traumatic shock upon the children and the tremendous problem of how to cope with it. The three-year-old Robby was re-living the nightmare of the arrest every night with fits of trembling and whimpering. The seven-year-old Michael gave Ethel

*Parenthetically, this was the same publisher which brought out the second printing of The Death House Letters under the title, The Testament of Ethel and Julius Rosenberg (Complaint, ¶ 19).

no rest with his insistent demands: Why couldn't he be taken along to visit his father, or why couldn't he talk to him by phone? Why had Uncle David been arrested . . . ? Why had the detectives torn apart the house . . . ?" (Page 124, Exhibit C, annexed)

* * *

"The problem of the children, too, was steadily increasing. This was an enormous pressure on both parents. For Julius, helpless behind bars, it was tormenting to hear from his wife that the shock of his arrest might leave the boys with permanent psychological scars." (Page 130, Exhibit D, annexed)

* * *

"The little one was 'grinding his teeth in his sleep' when he was not watching all day 'for Mommy to come home,' whereas the older one was driving her to despair with his 'wild moods.'" (Page 142, Exhibit E, annexed)

* * *

"The effect of the institutional life upon the children was quite serious. When their paternal grandmother, Sophie Rosenberg, and Emanuel Bloch visited them, they appeared 'nervous, tense . . . and constantly given to tears. Physically, there was a considerable loss of weight and a 'general debility.'" (Page 142, Exhibit E, annexed)

* * *

"Up in the Bronx, somewhere in a shelter home, overcrowded and understaffed, were his two boys reportedly in need of psychological care." (Page 198, Exhibit F, annexed)

c. Another book, The Betrayers, by Jonathan Root (Coward-McCann 1963), also listed on my acknowledgement page, commented upon the plaintiffs' mental state as children even before Ethel and Julius Rosenberg were indicted:

"But the boy [Michael] was sickly and nervous, spent most of each winter in bed with colds, sore throat and fever. Despairing, Ethel took a course in child psychology at the New School for Social Research." (Page 78, Exhibit G, annexed) (emphasis added)

* * *

"A year later, Ethel gave birth to her second son. He was named Robert Harry Rosenberg, 'in beloved memory,' and Julius and Ethel had two problem children."

"He had his hands full anyway, for Michael was demanding, rude and given to tantrums which neither Ethel nor Julius could ever control. As passersby stopped to stare at the screaming, twisting Michael, Julius would smile thinly in a silent plea for sympathy his arched black pencil-line mustache spreading and drooping." (Page 80, Exhibit H, annexed) (emphasis added)

* * *

According to this source, plaintiffs' neurotic behavior continued and accelerated after their parents' arrest:

> "Tessie Greenglass found herself ill-equipped to take care of two disturbed boys. They slept with her in a sagging double bed and awakened her constantly with nightmares." (Page 108, Exhibit I, annexed) (emphasis added)
>
> * * *
>
> "Michael was subject to tantrums which Mrs. Greenglass, now sixty-eight, could not control." (Page 108, Exhibit I, annexed) (emphasis added)
>
> * * *
>
> "'The fact is,' Julius reported, 'both children are disturbed.'" (Page 229, Exhibit J, annexed) (emphasis added)

Therefore, as a matter of law, my comments concerning the plaintiffs' state of mind as children were not made maliciously within the meaning of the authorities cited in Point II of the accompanying memorandum of law, but were supported by responsible research, and are therefore privileged.

Right of Privacy

15. Count II also sounds in invasion of the right of privacy. It is based upon some of the same 77 pages

cited in support of the libel claim. (See plaintiffs' Responses to Interrogatories 12 and 13 and supplement thereto.) It is elementary that in matters of public interest and history, any alleged claim to privacy* must yield to the public's paramount right to be informed.

16. Nor can plaintiffs prevent the entry of summary judgment by alleging falsification or fictionalization of the history of this case. As a matter of law, the right of privacy claim is fatally defective because the protection afforded by New York Civil Rights Law §§ 50 and 51, the only applicable statutes, condition any remedy upon a use of the plaintiffs' "name". (See Point I(e) of accompanying memorandum of law.)

17. At page 492, I wrote:

> "This [living with their grandmother] was a stopover arrangement until the children could be adopted by their chosen new parents, whose names they took.
>
> "A psychiatrist advised that what Michael and Robby needed most was anonymity and a home with loving parents. All this they enjoyed in their new surroundings."

---

* As appears in Point I(d) of the accompanying memorandum of law, Massachusetts does not even recognize such a tort.

18. Therefore, I never revealed the plaintiffs' surname "Meeropol" in the book or otherwise. The plaintiffs had chosen anonymity and despite my right to do so, I chose not to identify them even though it might accommodate the curiosity of the readers.

19. The privacy statute is also inapplicable as a basis for a cause of action because the references to the plaintiffs as children were merely incidental to the purpose of the book which was to describe a historic trial and the chief participants therein. (See Point I (f) of the accompanying memorandum of law.)

20. For the foregoing reasons, the motion for summary judgment dismissing Count II should be granted.

Louis Nizer

LOUIS NIZER

Sworn to before me this

20th day of January, 1974.

George Bronz

GEORGE BRONZ
NOTARY PUBLIC, State of New York
No. 60 0250314
Qualified in Westchester County
Commission Expires March 30, 1975

EXHIBIT A
(Annexed to the foregoing Affidavit of Louis Nizer)

Life After Death

The Sons of Julius and Ethel Rosenberg:

On June 19, 1953, Julius and Ethel Rosenberg were electrocuted in the Death House at Sing Sing for having committed what the FBI still calls "the Crime of the Century." They had stolen the secret of the atom bomb, it was said, and given it to the Russians, thereby making possible the Korean War. To the end they maintained their innocence and refused to implicate others; their silence cost them their lives.

The Rosenbergs were survived by two sons. Shortly after their parents' execution, Michael and Robert Rosenberg disappeared from the public eye and were forgotten. For 20 years they lived in anonymity and silence, until recently, when they decided to surface quietly in order to defend their parents' innocence. Today they are grown men, fathers of families, teachers at a small New England college. They are known by the patronym of Meeropol.

At first glance, the Death House at Sing Sing seems far removed, both psychologically and politically, from Springfield, Mass., which Michael and Robby Meeropol have made their home. But the shades of the distant prison house are felt in this old, decaying New England industrial town. June 1953 does not seem so very long ago, nor is their childhood a distant, alien world.

Michael Meeropol is 30 years old now. He remembers a lot. He has a friendly smile, a warm sense of humor, teaches economics at Western New England College, and is working on his PhD dissertation. Annie, his wife, is a teacher as well. They share housework and both take care of their two children: shy, blond-haired Veronica Ethel, who looks like Annie; and strong, outgoing Gregory Julian, an adopted black child. Michael works hard, but manages to spend much time with his family, and occasionally plays the guitar, though not as often as he would like.

Robby is 26, and his memories of the execution are not as clear as Michael's. He is dark, deliberate and, in his own view, clandestine. He is more reserved than Michael; his emotions are deeper beneath the surface. Robby Meeropol originally came to Springfield from the Midwest in hopes of doing working-class organizing, but he now teaches anthropology at Western New England College, which has not yet registered any shock at having two sons of the Rosenbergs on its faculty. His wife, Elli, is active in the local women's movement, and they have a daughter named Jenny. The family lives in a commune with three other adults. It is a large house, with a vegetable garden in the backyard during the summer. In the living room, there are lots of books and records, and in the second-floor bedroom hangs an original sketch of Julius and Ethel Rosenberg, signed by the artist, Pablo Picasso. The figures look confident and dignified; the drawing is a reminder that the Rosenbergs have had friends throughout the world, including Picasso, Albert Einstein, the children of Sacco and Vanzetti, and millions of lesser-known people.

When their parents were executed in 1953, Michael Rosenberg was ten years old and Robby was six, and they became fugitives at an early age. They learned while still young to protect each other, to hide their identities, to deny the probing questions of adults who knew the truth. In 1953–after three years in limbo–they went to live with Ann and Abel Meeropol, older radicals and professional theater people who went by the stage name of Allen.

The Meeropols made it their business to shield the boys from publicity and notoriety. And so they grew up in the semi-underground, schizophrenic world of the red-diaper babies in the 1950s, got involved in the Movement in the 1960s, and became family men, radicals and teachers in the 1970s. In that time they never publicly acknowledged themselves as the children of Julius and Ethel Rosenberg–a secret known only by their families, close friends and few others.

During the last two years, they looked on with mixed feelings as their lives were fictionalized in a novel called *The Book of Daniel*. Then Doubleday celebrated the 20th anni-

Jonah Raskin is author of The Mythology of Imperialism *(Delta paperback).*

by Jonah Raskin

versary of the execution by publishing Louis Nizer's *The Implosion Conspiracy*. Michael and Robby watched it climb and settle comfortably into the best-seller lists, and as Nizer's myths, distortions and misinterpretations went unchallenged, they grew pessimistic. It was, they felt, like watching their parents being tried and executed again. "Throughout last year," says Michael, "with people reading the distortions in Nizer's book, I felt that the other side was winning ... Nizer makes my parents to be '60s political stylists. He misuses the letters, says they were the equivalent of Jerry Rubin tearing off his robes and stomping on them on the Dick Cavett Show. He says that they postured in the letters, that they loved the publicity. But I think that is a misunderstanding of their life and values. ..."

Their life and values: for the first time in 20 years, Robby and Michael Meeropol publicly identified themselves as Robby and Michael Rosenberg and brought suit against Louis Nizer—for violating the copyright laws in his use of their parents' *Death House Letters* and for misusing the copyrighted material "... to deceive ... and to impress the public with the authenticity ... of false, fictitious, and distorted writings." They took Nizer to court, they say, to correct "this grievous wrong."

[MEMORIES]

When Julius and Ethel Rosenberg were arrested in 1950, the family lived in Knickerbocker Village, a housing project on the Lower East Side. "It was a big, beautiful, brick apartment building," says Michael, "with a playground; the K and K luncheonette inside so you didn't have to go out on the street. It was nice. We didn't have a TV, we never had a car, but we had a cheap phonograph, records, and a radio of sorts. But remember, my father owned a machine shop. Of course, he was paying off his debts. He was, if you'll pardon the expression, petit bourgeois. ..."

Michael's memories of the period are sharper than Robby's. "I have a weird kind of memory that fixes things in my mind. I can remember details." But both have become archeologists into their Korean War past, probing layer after layer of an historical record buried deep in their subconscious. Something or someone often jars their memory: "I know that my father was a hell of an intellectual," says Michael. "According to Morty Sobell he was more like a Talmudic scholar than an activist, always thinking, reading, studying, discussing things. That's what others have said about him, but he came across to me as someone who liked to play baseball. He played baseball with me in the house. If I hit the ball into my kid brother's crib it was a double; if I hit it out the window it was an out. It seems to me that Julius was always at home, or taking me somewhere. It's hard to imagine he was working. We used to go for rides on the Third Avenue El, to South Ferry, and then on the Staten Island Ferry, and to the Bronx Zoo. Occasionally I went to his machine shop on Houston Street. I can remember playing with magnets." They were avid baseball fans, and supported the perennial underdog, the Bums, the Brooklyn Dodgers mainly because of Jackie Robinson.

Some accounts portray Julius Rosenberg as a committed ideologue who put much effort into indoctrinating his eldest son. Michael disagrees: "I think I was too young to be indoctrinated ... The closest I came to indoctrination was playing a 'Bridge' game. I was a bridge. All the war convoys would go over me and when the fascists went over the bridge I raised up and my father said, 'Great, you killed the fascists, shake hands.' I remember the smile on his face. I remember that he taught me that fascists were enemies."

Michael remembers Ethel Rosenberg as "short, dark, and ... hairy, though not her face. She was artistically oriented, loved to sing, and I think she played the guitar. She had a great voice. Also, she spoiled me rotten, doting on me. Can you believe it, they were poor people on the Lower East Side, and they bought a piano for our tiny apartment and set me to work taking lessons. I remember playing 'From the Wigwam' in that apartment."

Then, in 1950, the Rosenberg family was torn apart. "In August," recalls Michael, "my mother was arrested. I've read and I've been told that I screamed on the phone but I don't remember it. That night a woman who was hired for the day stayed with us, and the next day she took us to Ethel's mother, who just took care of us. She wanted to get rid of us immediately. She held on to us in September and October, and we missed a lot of school, and then she dumped us at the Hebrew Children's Home in the Bronx. I hated it. Most of the hired people around us were young black women. A young high school kid was our counselor. The black women were paid miserably, and they used to take out their aggression on us. They would beat us up if we were at all sassy, and since we were pretty troubled, we were often sassy. My problem was that I was a finicky eater. I refused to eat, but Robby picked it up and started to eat, and I would say, 'No, Robby, don't.' After that they separated us, and he learned to eat. He wasn't as set in his ways as I was.

"When a new girl was hired, I was pointed out as a trouble maker. They told her how to deal with me: 'He likes bread. If he doesn't eat everything, we give him nothing.' I hated it, but I also started to play with the other kids. That lasted from November to June [1951]. Then they set up a home with my father's mother, and a registered nurse. When I got into her house, I was wild out of my mind, and my grandmother couldn't control me, and when the nurse tried to [control me], grandma interceded and finally drove the nurse away. We stayed there for the whole summer, went to day camp in the summer, went to school, had a bad year at school, a horrible, horrible year. The year at the shelter, we went to PS 30 in the Bronx and that was a good year. Kids liked me, I got along with the teacher. In PS 132 in Manhattan it was horrible. My aggression showed up in bad penmanship. My conduct was terrible. Grandma couldn't handle me by then."

Robby lacks Michael's clear recollections of this period, but he does remember Mrs. Rosenberg—Julius's mother—and the impact the trial had on her. "She seemed to be a rather typical Jewish grandmother, fairly ignorant ... I think she was destroyed by the trial ... she became senile, fell apart and died, when she was about 73. She was old enough for them to say that she died of old age, but it seemed to me that she was really too young. She always talked about her son being killed: she had a special place for Julius in her heart."

Michael says he was a wild child at his grandmother's, and he was just beginning to learn about the world and the way it viewed him as the son of Julius and Ethel Rosenberg. At first, he recalls, he was "very open about who I was. I was young and naive. I told Phil, my first new friend on my grandmother's block, who I was. I went to his house and I also told his parents. They listened carefully when I told them that my parents were innocent. They were friendly, and nice, and it made me feel good. My friend Phil told me he had another friend named Lawrence who was a blabbermouth, that he talked too much, and that I shouldn't tell him. But my reaction was, 'Oh, that's great. I'll tell him, and he'll tell the whole neighborhood that my parents are innocent and we'll get friends to help.' We told Lawrence. One day when I was at his house watching TV, his mother asked, 'What's your name?' 'Michael Rosenberg,' I said. 'Are you Julius and Ethel Rosenberg's son?' she asked. 'That's right,' I said, 'and if you read *The National Guardian* you'll see that they are innocent.' She shouted, 'Don't talk to me about it.'

"Then they started to work on Lawrence. His older brother said, 'Look, Lawrence, are you a loyal American?' And the mother said to me, chasing me out of the house, 'It's time for you to go now.' She turned to Lawrence and said, 'I don't want you hanging around with your communist friend anymore.' And to me, 'Don't let me catch you hanging around Lawrence anymore.'

"I was an eight-year-old kid, so I just ran home crying. That was the beginning of knowing to keep my trap shut. It's funny that the first kid was sympathetic. It was good luck. If I had been lucky enough to meet a few friends then I might not have been so discouraged by Lawrence's family. I might not have shut up."

[THE TRIAL]

Meanwhile, Julius and Ethel were in prison, and Robby and Michael went to visit them often. "I remember flashes crystal clear," says Robby. "I can remember driving up to the prison, the Hawthorne Circle, which is no longer there. But I don't remember what the prison looked like. I remember my brother playing hangman with my father. I never did. I remember a couple of visits- quite subdued and the weird thing about them was how normal they were. It was like everything was so covered up, because to admit how freaky the whole situation was would have been unbearable. I don't remember a lot, and maybe I repressed it."

Michael, however, was old enough at the time to know what was happening and to try to figure it out. "I was told by others that they were charged and found guilty of being spies. My initial reaction at the time was that that was stupid. 'There is no such thing as stealing the secret of the atom bomb,' I thought. I think that was a normal reaction. If only Manny Bloch had brought out that point in court! What happened was that from 1949 on, scientists were drowned out by the politicians who kept saying that there was a secret, that the Russians had stolen it. Once when I went to visit my parents in jail I asked them point blank, 'Are you innocent?' Later on I found out that they weren't too happy about my having to ask them, as you can imagine. 'Of course we are,' they said, and I was satisfied."

They were innocent, he believed, but they were in jail and the lawyers couldn't get them out. He decided that he himself would be a lawyer when he grew up. "I visited my father in the Death House and told him I'd become a lawyer and free him. There were a lot of fine lawyers around at the time—Vincent Hallinan, Charles Garry—but they didn't have anything to do with the case." It was a point that bothered him—the failure of the great radical lawyers and the Communist Party to rally early to the Rosenbergs' defense—and he devoted a lot of thought to it in the years that followed. "My understanding is that the CP reacted to them like the plague. They were concerned with *their* own cases, the Martinsville Seven, Willie McGee. Left-wing lawyers berated my parents' lawyer Manny Bloch for taking the Rosenberg case. 'How dare you,' they said, 'the Left has got to be clear of this case.' The CP was concerned with the Smith Act defendants and the party people who had gone underground. *The Daily Worker* gave it very little publicity. Go back and read the *Worker;* you'll see that while the Committee to Secure Justice for the Rosenbergs was struggling along, while the *National Guardian* was running its series about the trial, there was nothing, nothing, nothing. They gave no support; it's as simple as that. Later on, when it was too late, they joined the bandwagon."

He wonders today if a better legal representation would have freed his parents, and, in a way, he fears the answer. "The 'lawyer' problem is of crucial importance to me. I hope it's not true that a better lawyer could have saved Julius and Ethel. I love and revere the memory of Manny Bloch. But I look back at the trial now and see lots of mistakes. With perfect 20/20 hindsight I see many things which could have been done, and many of these things Bloch himself later admitted.

"I don't think Bloch was a bad lawyer, but he was a scared lawyer, and he was alone, I mean dreadfully alone. If the Communists treated him like a pariah, you can imagine how others handled him. He had no one but his old father, who was a business not a trial lawyer, and Gloria Agrin. It was a political necessity that they be convicted, but I think that a better fight could have been made, certainly. I must believe that the political necessity caused them to die, because otherwise I have to believe that the Committee, and Bloch, were responsible, and I can't believe that because the case is of such great historical importance. It would hurt too much to believe that our friends were to blame.

"Others will disagree with me. I'm very subjective about it. Morty Sobell flays both Blochs mercilessly, and also his own lawyers, who told him not to testify. Bloch was scared about the handling of the case. The CP lawyers in the Smith Act cases had been aggressive and combative, and they had just been convicted of contempt of court. Bloch's tactic was to be extremely courteous, and deferential, but he was so deferential that he ended up praising the judge for an impartial trial. He was convinced before the trial even started that they would be found guilty. He was hoping against hope that the judge wouldn't sentence them to death. He thought that his own courteousness and respect for the judge could save my parents from the electric chair."

[THE SUMMER OF '53]

From Mrs. Rosenberg's house the boys went to New Jersey to live with friends of their parents. There they spent the summer in the country and stayed on for the next school year. "I had an excellent year there," says Michael. "I visited my parents regularly, and I was pretty happy. Robby and I had tremendous conflicts with the younger son of the people we were living with. The two people were older, and they were driven to distraction. Unfortunately that was the summer of the execution--an endless summer of playing ball."

The summer of '53: a summer of baseball, football, talking with friends; not a painful summer. "The execution was a small part of it. June came, we went to Washington, got back. We went to visit our parents, and I put on my little show--I started to wail as I was leaving, 'One more day to live, one more day to live' over and over again. I was kissing them goodbye and leaving. Then we got the one-day reprieve. I knew about Justice Douglas's stay of execution. We watched the baseball game on June 19 as the announcements came in. I still had hope, I thought that the mercy letter my mother had written would have an effect. That day was a bad day. I remember keeping it from Robby for a week, and then one day he was talking about when Mommie and Daddy are coming home, and I said, 'Sorry, Robby, Mommie and Daddy are dead; they're not going to come home.'"

Just like that: dead, gone, forever. "I used to mistreat him very badly," says Michael. "There were times in High School when we'd be talking at night, and Robby would say, meaning our adopted parents, 'Where's Mommie and Daddy?' and I'd say, 'Dead.'

"I'm sure that Robby built up a protective wall because he really didn't understand. In my case, brutally challenging him was kind of useful. I didn't have friends who knew about it, and so I rarely talked about my parents. A lot of stuff was being submerged in me. I remember reading *Knock on Any Door* and the end of it there's a vivid description of the events leading up to an execution in the electric chair. That got me. I do not remember crying before then for emotional reasons. That was the first time. The fact that it was such an extreme gush was incredible. It leads me to believe I was submerging things, and forcibly reminding Robby who we were. It was my way of fighting that repression. Because Robby would never talk about those things. I wasn't very nice during those two weeks in early June, 1953. That's the only pain I remember. I was playing baseball when it happened. They took us out of the house to play catch, and when we came back it was over."

[FROM ROSENBERG TO MEEROPOL]

About six months later, Emanuel Bloch--their parents' lawyer--arranged a new home for them with Ann and Abel Meeropol. There had been problems living in New Jersey. Michael remembers that people kept asking him, " 'Are you any relations to those two spies?' And I'd say no, telling myself, 'Well I haven't lied, because they aren't spies.' "

The boys were moved back to New York, and in December 1953, Manny Bloch told them that they were to go to a Christmas Party and that a couple would pick them up there. The couple were the Meeropols: "We didn't know we were going to live with them until they told us. I think Manny thought it would be better that way. Manny died before the Meeropols were certified as our legal guardians, and so the bastards from the Welfare Department started to move. One night they threatened to break down the door. We went to court. They sent us to the Welfare Department, to Pleasantville, N.Y., and then our side got a writ of *habeus corpus*, and the judge sent us back to our grandmother's. He appointed a nice co-guardian." Finally, in September 1954, they moved in permanently with the Meeropols.

For both boys, it was a terribly important change in their lives. "I was a real wise guy," says Michael. "I was given a thorough examination by Dr. Frederick Wertham in 1954, and he thought I was very close to being psychotic. I needed extremely careful, firm loving care, in as normal a situation as possible. I couldn't stand still for a minute. I never looked at anyone when I talked to them. I was vicious in terms of responding to any adults who crossed me. I was a fresh kid. I drove adults to distraction. The Meeropols sat on me. They gave us steadiness, a family, a foundation." The Meeropols were loving and warm but they could not exorcise all of his fears. "Like all kids, I used to have nightmares. For years, even after I was married, I would wake up screaming. While my parents were in jail, I used to have monster dreams. I remember dreaming of running away from something. I would hear the sound, and feel the presence of the creature, but I wouldn't see it. It would be one of these things from above. The voice would say, 'We've got you now,' then someone would wake me from my sleep because I'd be screaming out loud."

And then there were the identity crises, the inevitable questions about his real parents, and his denials. "When I was in junior high school, the *Daily News* carried a series on the Death House and ran a picture of me. We tried to get the picture pulled, but it was printed, and several kids in school saw it, and thought they recognized me. But I denied that I was Michael Rosenberg. Little by little that began to grate on me. In junior high school I even volunteered the opinion in class that you weren't a good American unless you believed in God. That kind of stuff was just so bad. I loathed myself for acting that way.

"Then in Elisabeth Irwin High School the situation changed because radicalism was viewed as a good thing. I began to think of changing my name. I wanted to make amends, to pay back for all the bad things I did."

[A PRIVATE WORLD]

As for Robby, from 1949, when he was three, to 1956, when he was ten, he lived under Michael's care and protection. "We had a private world," he recalls, "but I don't think that we talked much. I was very conspiratorial." Where Michael was loud and insistent, Robby was low-keyed and easy-going. He was a true introvert and he hid his emotions. More than Michael, he felt persecuted and kept silent about his identity.

The boys were different, but they were close- perhaps

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ROSENBERGS

(From page 41)

closer than most brothers. They often slept together in the same bed and they "never fought. We were civil," says Robby. "He always tried to build me up, said I was better. There was affection and kindness.

"There were certain code words between us. Michael was very earnest. He would ask, 'Do you think he knows about Mommie and Daddy?' That question would define a whole set of social reactions and initiate a strategy for responding to any given social situation. Michael's question had infinite implications." Michael, for his part, tried to protect his brother. "I would go apeshit if he went near the edge of the subway platform. I'd always want to hold on to him. I used to have him hold on to me, on the elbow when we walked in the street."

Robby developed his own protective mechanisms: "We learned how to be normal, I mean we red-diaper babies . . . I remember that it was better to keep quiet, and not say anything, and stay in the background."

Those were difficult times for Michael and Robby, but not nearly so difficult as they might have been without the Meeropols. "They decided that I needed a normal atmosphere," says Robby, "that I should be separated and protected." It took courage on their part, "and it was a difficult task." The Meeropols gave the boys a more-or-less stable climate in which to grow up. And in spite of their unique situation, they led more or less normal lives.

And so they survived the 1950s with memories not unlike those of thousands of other "red-diaper babies." "I remember McCarthy," says Robby, "but his death, not his power and glory. I remember him being discredited. I remember the 1956 campaign, but not much before 1955. I remember Elvis Presley on TV, things loosening up. I don't recall the hysteria of the 1950s, but the aftermath, the legacy of fear." That, too, gave way in time, as Southern blacks began to stage marches, boycotts, and sit-ins for integration. A new Movement began to take shape—filling the space left by McCarthyism—and it appealed to the sons of Julius and Ethel Rosenberg.

[THE EDUCATION OF MICHAEL]

The year 1963 brought the great march on Washington and Martin Luther King's stirring oratory: "I have been to the mountain . . . I have a dream . . ." It was also the tenth anniversary of the Rosenbergs' execution, and their sons were becoming young men. Michael Meeropol was 20, an undergraduate at Swarthmore College in Pennsylvania, and a fervent supporter of what was already called The Movement.

He was the archetypical son of the Old Jewish Left: "I was brought up on folk songs, played the guitar and was sent to a *shule*. . . . I didn't learn Hebrew but Yiddish, and was taught about the tradition of Jewish rebels, like the Maccabees, and also songs of the resistance, like this one:

Never say that there is only death for you.
For leaden skies may be concealing days of blue,
For surely all for which we yearn will yet arise,
And our marching steps will thunder, we survive.

In a *shule*, radical Jews could remain Jews and be radical too, without sacrificing one part of themselves.

This Old Left heritage is still very important to Michael Meeropol. "I cut my eye teeth on *The Great Conspiracy Against Russia*," he says. "That was at age 11. Then I went through Elisabeth Irwin, a rad school. I was pro-Soviet on the Cold War and was Vice-President of a New York City chapter of SANE. . . . It was not an easy transition from Old Left to New Left."

In 1960, he graduated from Elisabeth Irwin and went to Swarthmore, where almost immediately he became involved in radical politics: "[We] were unashamedly Leftists from the start. We didn't hide. People used to call us the Swarthmore CP, and we'd smile at that. Everyone knew we weren't members of the party, but we supported the Russians.

"Our life style was that of ordinary college students. We liked to get laid, get drunk, have a good time. I didn't smoke grass, and as far as I know, there wasn't any at Swarthmore when I was there."

Though he did not experience the cultural upheaval which later rocked American college campuses, he was very much a part of the political explosion in its earliest stages. But for him, political activism carried certain special risks which it did not have for others: "My biggest fear was never jail, but arrest and the ensuing publicity and exposure. I thought that who I was—the son of the Rosenbergs—would come out. When I finally was arrested, I enjoyed myself.

His arrest came when he was still an undergraduate at Swarthmore. There was to be a civil rights demonstration in Chester, Pa.: "I was embarrassed about not going and doing passive resistance. So I decided to picket instead. . . . But we were all arrested anyway—those committing civil disobedience, and those picketing—and thrown in jail together. I had separated myself from the sitting-in but the police made no such distinction. We were all the same to them.

Michael graduated when he was 21 and went abroad, to Kings College, Cambridge, still struggling with the question of his identity. There he lived in a room situated above E. M. Forster's college quarters and studied economics with the British Marxists Joan Robinson and Maurice Dobb. In the early '50s, many radical academics had fled McCarthyism, taken new names in England, and gone to work in British universities. "I thought that it would be an excellent opportunity to change my name [back to Rosenberg]. I would be in a strange country, no one would know me. England offered a perfect opportunity, a new name for a new life, but again my parents dissuaded me. Now, looking back at it, I'm not really sorry that I didn't change my name."

In the mid '60s, he returned to America to continue his post-graduate studies at the University of Wisconsin, and his political beliefs reflected the growing impact of the New Left: ". . . I awakened to the bankruptcy of the American Communist Party. I didn't know that before. I was very excited by the Peace and Freedom Party, and by the Black Panther Party, which was rapidly expanding at that time. I wanted to see a genuine third party take shape and offer a real alternative, and so I helped organize the Wisconsin Alliance. I went door to door in my neighborhood talking to people." But

while he moved away from his earlier adherence to Old Left politics, he had reservations about the thrust of the student movement in the late '60s. "In 1968, for example, when my friends in SDS were occupying buildings at Columbia and protesting in the streets of Chicago during the Democratic Convention, I wanted to form a third party to get on the ballot. My kind of work must have seemed extremely tame. [Personally,] I wanted to become a columnist for the student newspaper because I felt that I could convince people that radicalism is rational. The biggest argument against the New Left was that it was irrational. I always felt that if you had some kind of respect for the people you were trying to persuade, you would have a much better time showing that it was rational. In 1969 Weatherman said very honestly, 'There's no chance of convincing them so let's not try,' and I must admit that the extreme racism of the Nixon period, and the reaction to the POWs coming home, sometimes made me feel that the majority of the American people are so rotten they deserve Nixon, and rising prices. It's a terrible thing to think, and for anyone, like myself, who believes in socialism and progress, it's almost a confession of complete failure. Because if you aren't going to reach the American people, there's no way out.

"We had createin Madison–and it's still true of the city–a semi-liberated territory. But instead of reaching out, radicals flailed out. All the trashing at Madison was a catharsis, like jerking off."

Michael recalls the bombing of the Army-Math Research Center in Madison. The explosion killed a researcher and demolished a building which for years had been the target of student protests because of its involvement in counter-insurgency planning. "First of all, I was sorry that the guy was killed. I think that most bombers have tried not to kill or injure people. I was also worried about the negative reactions that might have ensued. I had mixed feelings. I didn't like trashing or blocking traffic because you simply prevented ordinary people from getting to and from work, from shopping, or travelling. But blowing up Chase Manhattan or Army Math–that was a real pin prick in the Empire. It hurt."

Still, for all his sympathy for the New Left, Michael admits that he never "made the cultural transition from the Old to the New Left. "I've always been scared shitless of psychedelics. I thought that there was so much repressed in me that if I took LSD I would let it all out violently and suddenly. I'd rather let it out slower, and under more controlled circumstances. It was a deliberate, conscious decision on my part . . . There must be a lot of self-hatred inside because I survived. I don't know specifically what's inside, but I assume that there's a lot of stuff that my body has done a good job of hiding. And since I'm functioning in the world without difficulty, I've felt there's no need to delve into it. Let sleeping dogs lie. That was a conscious decision I made."

[ROBBY AND THE NEW LEFT]

In 1960, Robby Meeropol became a teenager, and he was part of the generation which helped to transform American politics in the decade that followed. He was just young enough that he scarcely remembered the Red Scare and McCarthy, just old enough that his political education came after the election of John Kennedy to the Presidency. He felt much less identification with the Old Left of his parents than his brother did, and he made the transition to the New Left easily and naturally. In large part, it was a cultural question. Where Michael related strongly to Jewish culture, Robby resisted it: "I kept on thinking, 'Why be Jewish? Why be anything?' I think it is a silly tradition to divide people into all those lines. When I was growing up, we always seemed to live across the street from synagogues–there was 149th street and Riverside Drive, 161st and Broadway. I can remember one Saturday morning watching the people come out of the synagogue. They were so arrogant. I'd have to step out of the street for them. They probably assumed I was an Italian kid because I was so dark, a street urchin, and probably Catholic to boot."

In some ways, the Meeropols eased Robby's subsequent transition to the New Left. "They were *National Guardian*, rather than *Daily Worker*, readers. They were looser and into theater and arts. I went to Elisabeth Irwin, and Lincoln Farm in the summer. I was around Left Wing people. I remember the March on Washington in 1963, getting into folk music. I knew some people who formed the Westchester Viet Cong. They had a scenario; they'd camp out in the woods, and at two or three in the morning they'd vandalize army bases. They did spray paint actions."

Robby went from Elisabeth Irwin to Earlham College in Indiana. There he helped to found the Earlham Peace Committee, supported the National Liberation Front, organized demonstrations against the Vietnam War, and made cultural contact with the generation of the '60s. "At Earlham College, one of the first persons I met was a head. I got into the New Left, and youth culture very quickly. It was a process of becoming separate from my parents. My friends and I decided we were going to be out front. The Old Left whispered, 'We're progressives.' We were going to shout, 'We're revolutionaries.' "

After two years, Earlham seemed too small a world for him, and Robby transferred to the University of Michigan at Ann Arbor. He joined the student political party called "Voice" and later SDS. There he was arrested in 1968, "after Chicago," he recalls, "and mostly because of Chicago. There were some valid criticisms but Ann Arbor radicals made all kinds of excuses about not going to the demonstration. We had a sit-in to protest clothing allowances for welfare mothers. When I was arrested, I had a trapped-in feeling. I was 'in their clutches.' I had the feeling that they can really seek out and find you."

In the summer of 1969, he became involved in a living collective in Ann Arbor called "The Commune." "There were originally seven people, then five. We lasted for two years, became a real institution. The commune came out of the Women's Movement. There were more women than men, and women's politics predominated." He calls that period "the crazy times" for the Ann Arbor movement. "There were large demonstrations, recruiter actions, including a major one against Dow

Chemical. Another day another action. The recruiters were locked in their rooms, windows were trashed, people split before the police came. I was largely in fear. By 1970, I believed in the million groovey kids theory. It was really insane. I never went into Weatherman, but many of them were friends. The physical violence part was too scary for me. [Yet] I didn't think, as many Weathermen did, that the revolution was going to be made here and now in the streets. After the SDS split I found the organization stifling, and I dropped out. Looking back at it now I can say that the New Left wasn't a hassle for me. I think that one of the reasons I got involved with the New Left was that it was scary to dredge up all that stuff from the past which was connected with my parents, with the trial, and I didn't want to know about it. So I tried to apply my political feelings to the present, and fell into the New Left entirely."

[COMING OUT]

It is 1973: Year of Watergate, and Julius and Ethel Rosenberg are 20 years in the grave. Their boys are men now, with families, careers, and lives of their own. They both married early and had children: "I think it's more than a coincidence," says Robby. "The desire to create the family, and to reestablish that which had been destroyed was very important." They both are part of larger communities as well. Michael works with the Union of Radical Political Economists, which he regards as a kind of political family. Robby, his wife Elli, and their daughter Jennie share a large, three-story house with three other adults.

Over the years they have gradually come to terms with their past, and the memories of 1953. What was once a closely held secret, they learned to share. "There were two people I was going to tell," says Michael, "who interrupted me before I could get it out, which was a great relief. Once I wrote it out on paper and showed it to a friend. My wife was the first person I told directly. It took forever to get it out. My heart was going like a goddamn bass drum. I finally closed my eyes, said it to myself once, then said it out loud. My wife said 'Who?' It was anti-climactic. But ever since it's been easier. It's as easy as snapping fingers."

Robby found it more difficult. "Elli was the first person I told I was the son of Julius and Ethel Rosenberg. She knew already, of course, and most of my best friends knew without me having to tell them. I didn't want to tell them, and I still have that hassle. I want them to *know*, but don't want to *tell* it."

There were pressures to make a public stand even before this year. In the late '60s Michael offered his help in getting Morton Sobell released from Alcatraz, where he was serving a 30-year sentence, but soon afterward Sobell was paroled and Michael's assistance wasn't needed.

Then E.L. Doctorow's *The Book of Daniel* appeared in 1971. It is a novel about the children of two spies executed for passing the secret of the atom bomb to the Russians, and it has become a best seller in radical circles. It is a work of fiction—not based on the actual lives of Robby and Michael Meeropol. The execution, for instance, occurs in 1954, and one of the children is a girl who enters a mental institution and commits suicide. Daniel—the elder son—doesn't follow his sister to the grave, but he becomes a cruel sadist, for example, burning his fair buxom wife with a cigarette lighter. Michael dislikes Daniel, whom he does not resemble at all, but he admits, "I could have been Daniel or worse." Even so, he enjoyed the book. "One of the things I liked best about the novel is when Daniel talks about his parents liking to screw a lot. That makes me feel good. Children are supposed to not imagine the idea of their parents screwing at all. When I was growing up as a pre-teen and a teenager I had that reaction, but I don't feel that way now.

"In the novel, Daniel knows everytime they screwed. In fact, I was too young to know. Julius and Ethel didn't have any problem walking around naked in front of us. So far as I remember, they weren't Puritanical, inhibited people." Michael says that he found the book moving. "When I read some of the journalist accounts of the last days before the execution, it grabs me, knocks the shit out of me. I remember finishing reading Doctorow. Annie wasn't home at the time. I put down the book and picked up both my kids and hugged them for a long time."

For his part, Robby thought that *The Book of Daniel* gave "a feeling of what it was like to be poor in New York in the '40s," but there his appreciation of the novel ends. "It's being taken as a sympathetic account of the Rosenberg case. That's awful; that's worse than J. Edgar Hoover's *FBI Story*, which no one imagines is sympathetic to the Reds." Doctorow, he feels, "has a strange head about sexuality. There are no normal sexual relationships in the book. Doctorow is 'bombastic' about sex; he's either hysterical or sensational or sado-masochistic. Also, Doctorow seems to be saying that you can't be political and also a humanist, that people are sacrificed to the cause."

If *The Book of Daniel* moved Michael and angered Robby, Louis Nizer's best-seller, *The Implosion Conspiracy*, produced no such mixed reviews. Both of them were horrified. Here was a book, advertised as the definitive work on the Rosenberg case, and so filled with inaccuracies—which they, from their own memory, knew to be inaccuracies—as to turn it on its head. For example, says Michael, "Nizer claims we were used by the Committee. That's a dastardly thing. He defames the Committee. We were protected, very few people came to see us; we weren't paraded around to stir up emotions, to sensationalize. I only went to three rallies, and once to deliver a letter to President Eisenhower, but we were never treated as pawns by any political group." Then again, Nizer sensationalizes his account with information of dubious authenticity: "Nizer had Julius practically stripping Ethel in jail the first time they meet, and getting on top of her. I don't think that happened. So far as I know they simply embraced. Nizer's book defames them in a way that invades Robby's and my privacy, destroys a lot of our psychological foundations by saying we were neglected while they became such active spies, and that we were used miserably in the campaign to save them. Both of those statements are bald-faced lies, and both are crucial."

The time was right, the issue important enough, for them to make their first public stand in defense of their parents. It was not a decision taken lightly. Robby in particular had always been reluctant to "come out," as they call it. "I thought that exposure would turn me into a television character, and I didn't want to be 'medium cool.' When I was little, exposure was very, very threatening, and secrecy became a way of life."

But the Nizer book seemed to demand a response. It was an instant best-seller, received largely favorable reviews, and Otto Preminger reportedly acquired the screen rights to make it into a movie. It could not be ignored, and there were other factors as well which pushed Robby and Michael to make a public stand.

There were, for example, the effects of time. These men Robby and Michael Meeropol, are quiet intellectuals, family men, but you sense that they have come as close to death as soldiers from the front: they have felt it touch them. There is a core of anger there, though it does not often emerge: anger toward the men who killed their parents and who are still very much in power. Nixon himself had a hand in whipping up the hysteria which claimed their lives, and not long ago he considered appointing the Rosenberg trial judge, Irving Kaufman, to the Supreme Court. He did not, and Kaufman--now a federal judge--continues to sit in the Foley Square Courthouse where he tried and passed sentence on Julius and Ethel Rosenberg. Irving Saypol prosecuted the case, and was rewarded with a judgeship; his aide, Roy Cohn went on to become Senator Joe McCarthy's right-hand man and, after that, a successful New York lawyer. In recent years his business dealings have come under official scrutiny, but he remains free and anxious as ever to justify the anti-communist crusade he helped to mold. These are men who profited directly from the Rosenberg execution, who rose to power, wealth and prestige while the bodies were still warm.

Both Robby and Michael knew that at some point they would have to take a hand in setting the record straight. Then again, the 20th anniversary of their parents' execution focused their feelings: "For a while I felt that the case was for the historians," says Michael, "but now I've the sense that it's the present, that the battle is on again." Watergate, moreover, seemed to create a propitious atmosphere: "It made it possible for us to say, 'Look, we've been saying all along that the government has been lying and forging. You didn't believe us then, but why not listen to us again."

Now they have gone public and come out, as it were. They are planning to republish their parents' *Death House Letters* for which each of them intends to write a new introduction. (Robby's may include a critique of the Doctorow novel.) They have hopes of being able to re-open the case. "You know the government had to execute them," says Robby. "If they didn't execute them, they would have had on their hands two people jailed for life. They would have had an active organization fighting the case all the time. How long could the government have covered it up under those circumstances? If it came out, it would have been worse than Watergate."

If the Rosenberg parents had the chance to clear the [illegible] Rosenberg sons have [illegible] themselves to the task. They [illegible] broader purpose as well and [illegible] special rewards. "It's energizing," says Robby. "It makes me feel I'm integrating different facets of my life. It's given me an opportunity to do valuable political work which is also personally satisfying. In this respect, I feel I'm lucky. Dedicating my life to this isn't an abstraction. I can make a difference. That's a feeling I often don't have. It seems essential to connect things, to bring together the different pieces of history, and my life."

These men are not poor, helpless victims and they do not want to be patronized, sentimentalized, or cast as orphans in an afternoon soap opera. Nor do they want to be known exclusively as the Rosenberg children. Both the accusing and friendly finger of recognition are unwelcome.

Yet they have undertaken a task which will undoubtedly bring them recognition and notoriety. They have done it out of a sense of responsibility—to their parents, to history, and to themselves. "I want to show that they were innocent," says Michael, "that their trial was part of American Cold War policy. They can also teach us about simple honesty. You don't have to go out and court danger to be a hero. They had no choice: they were pushed into their role by circumstances. [After we filed the Nizer suit] an article about us said that we'd been silent for years. I took that as a kind of rebuke. Now I've a desire to jump in with both feet to make up for lost time." ■

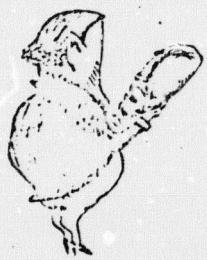

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EXHIBIT B
(Annexed to the foregoing Affidavit of Louis Nizer)

Portion of Trial Transcript of Julius Rosenberg

The Court: Well, strike out "Communist gatherings;" did you ever see her at any gatherings?

The Witness: I only saw her at my house, as I said, once [fol. 1777] at my shop; I believe, and that is about all I can recall.

Q. How often did you see her in 1950?

A. I would say she has been over to our house a number of times.

Q. How often?

A. I can't be specific. I would say a number of times.

Q. When was the last time that you saw her?

A. I don't recall. It may have been a couple of months before I was arrested.

Q. Could it possibly be a couple of weeks before you were arrested?

A. I don't know, sir.

Q. Could it possibly be more than a week before you were arrested?

A. I can't recall.

Q. What did you talk to her about the last time you saw her?

A. Well, she is a social worker and my oldest boy has been very emotionally disturbed for quite a number of years, and she used to work at the Jewish Board of Guardians, and I discussed the problem of my oldest boy with her.

Q. When did that discussion take place?

A. Almost every time I saw her.

Q. As the result of those discussions, did you subject your boy to any treatment?

A. Yes, we did.

Q. Where?

A. At the Jewish Board of Guardians.

Q. What else did you talk to Vivian Glassman about?

[fol. 1778] A. I had nothing else to talk to her about but that.

Q. Did you ever give her any money?

A. No, sir; never did.

Q. Did you ever send her on a trip to Cleveland?

A. No, sir; never did.

Q. You are positive of that?

A. I am positive.

Q. Did you ever hear of any discussion of that before?

A. No, sir.

Q. Is this the first time you heard any suggestion that you gave her some money?

A. That is correct.

Q. Isn't it the fact that you gave her $2,000. to take out to somebody in Cleveland?

A. That is not the fact, Mr. Saypol.

[fol. 1779] Q. You are positive of that?

A. I am positive.

Q. When did you first hear any discussion about that?

A. You just mentioned it right now.

Q. Never heard about it before?

A. I might have read it in the newspapers, I don't know.

Q. When?

A. I don't know.

Q. How long ago, since your arrest or before your arrest?

A. Mr. Saypol, I read the newspapers a few weeks ago in reference to a case that you tried to ask me a question about. I believe that is the time I read it, a week or two ago.

Q. And what newspaper, do you remember?

A. The New York Times.

Q. And what was the story as you read it?

A. I am sorry, sir, I can't remember.

Mr. E. H. Bloch: Wait, just a second. I object to this entire line of questioning.

The Court: He says he doesn't remember. No, no, I am not going to sustain your objection to the entire line. I do not know whether it is relevant or not.

Q. You say——

Mr. E. H. Bloch: Just pardon me, your Honor. I want to make my objection specific. I submit that on this line of questioning the prosecutor is making this witness his own. [fol. 1780] This was not covered by the direct, and I submit that the question has been asked and answered at least on three or four occasions.

The Court: Oh, Mr. Bloch, come, come. You know that in cross-examination a cross-examiner has the right to question the witness not only about relevant matters but about matters which go to credibility.

EXHIBIT C
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Judgment of Julius and Ethel Rosenberg" by John Wexley

Certainly it knew the serious economic predicament Ethel was left in. From a letter she sent Julius shortly after his arrest, we obtain a glimpse of the tremendous burden suddenly thrust on her.

It is written at one o'clock in the morning, after she has finished the laundry and "hanging the clothes." Her eyes "ache for lack of sleep," but she is overwhelmed by the number of unpaid bills accumulating in Julius' shop. She writes desperately, "How long can I wait to pay bills?"

Such indirect pressures were precisely what the prosecution had counted on to bring the Rosenbergs to heel. Not only was Ethel faced with her everyday housework – cooking, cleaning, washing, shopping and caring for two small children – but she was suddenly forced to take over the operation of a machine shop. With Julius' arrest, creditors lost no time in demanding immediate payments. Hence, in addition to the abrupt cutting off of all income, there was the problem of staving off total economic disaster.

Furthermore there was the mental and emotional strain in a woman whose brother and husband were both behind bars, with the one accusing the other of a crime punishable by death. And finally, there was the traumatic shock upon the children and the tremendous problem of how to cope with it. The three-year-old Robby was reliving the nightmare of the arrest every night with fits of trembling and whimpering. The seven-year-old Michael gave Ethel no rest with his insistent demands: Why couldn't he be taken along to visit his father, or why couldn't he talk to him by phone? Why had Uncle David been arrested . . . ? Why had the detectives torn apart the house . . . ?

Nor was there such aid or sympathy as one might normally expect from neighbors, friends and relatives. Following the sensational headlines, Ethel was virtually cut off from all human contact in this respect. The very immensity of the charge produced a paralyzing fear in everyone who had ever known the Rosenbergs. No one dared to risk the impulse of even telephoning Ethel. They, too, might be suspected of involvement in the "spy ring." And in turn Ethel, realizing that her phone was surely tapped, refrained from calling friends or even relatives for fear that such calls might visit upon them an equal fate.*

*FBI detectives had by this time visited some of Ethel's former high-school chums. One such friend still had some group snapshots the girls had taken together while out hiking. Learning of FBI visits to other friends of the Rosenbergs, she had hurriedly burned them. Another friend had kept some autographed programs in her "memory book" of Ethel's singing appearances with "Major" Bowes' amateur competitions, but in this "time of panic," had thought it best not to have such "dangerous" things around. (Virginia Gardner, *op. cit.*)

EXHIBIT D
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Judgment of Julius and Ethel Rosenberg" by John Wexley

Communism are enemies of freedom and traitors to the United Nations and the United States. American soldiers are dying . . . every man's house will be in a target area before this [Korean war] ends . . .

And so we come to Aug. 11, the day Ethel Rosenberg was again summoned before the Grand Jury, but, as we shall see, not for the purpose of further questioning. One might say that by this date the prosecution had waited patiently for Julius to cry "Enough!" For, in the three weeks since his arrest, his hand-to-mouth business was almost ruined. The credit representative had come to the shop to warn her. Ethel informed her husband that:

> "Letters already have been sent out to their subscribers cutting [us] off from any more credit. The accountant will be in next week. I'll be in the shop tomorrow early and will make calls to various accounts and try to get them to pay up."

The problem of the children, too, was steadily increasing. This was an enormous pressure on both parents. For Julius, helpless behind bars, it was tormenting to hear from his wife that the shock of his arrest might leave the boys with permanent psychological scars. He begged her to forget the shop entirely. It was evident that mounting expenses would soon wipe out the business, and it was better to sell the machinery now at a fraction of its value than to be utterly stranded later. Ethel reported that she had already given notice to the foreman of the shop, so that he would not "be left jobless suddenly."

From the prosecution's point of view it must have seemed that it required only one more blow to shatter completely the Rosenbergs' morale. In order to make the blow a telling one, it proceeded swiftly. On the morning of her second appearance before the Grand Jury Ethel was again faced with the task of finding a neighbor to take care of the children should the hearing run over into the afternoon when the boys would be back from school. Fortunately, there was a woman in the same building whose children were nearly the same ages as Robby and Michael. She volunteered to mind them, stating quite simply, "I'm not such a hero – but if I have to be afraid of my own shadow, then what kind of America will I give my kids?"

Dressing hurriedly in a trim, white-dotted, powder blue dress, and putting on a natural-colored straw bonnet, Ethel kissed the two small boys and assured them she would not be away so long this time.

The second Grand Jury hearing turned out to be merely a repetition of the first. There were virtually the same questions and answers.

EXHIBIT E
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Judgment of Julius and Ethel Rosenberg" by John Wexley

afternoon of her daughter's arrest, but that she was too old, too ailing and too poor to care for them. The little one was "grinding his teeth in his sleep" when he was not watching all day "for Mommy to come home," whereas the older one was driving her to despair with his "wild moods." Moreover, the flat had no toilet and, since the kids had to use the one in the hall shared by the other tenants, she was receiving complaints about their "noisiness."*

When the elderly counselor attempted to explain the emergency and assure her that better arrangements and sufficient money would be provided as soon as Julius' business was liquidated, Tessie Greenglass replied: "Well, I'm just warning you right now -- if you don't get those brats out of my house, I'm going to dump them at the nearest police station!"

While the harassed attorneys tried to find a purchaser for the shop's remaining assets, Julius and Ethel, informed about the imminent danger of the children being ousted by Tessie Greenglass, sought desperately to find a solution. Since it was impossible to arrange a foster home on such short notice and since Sophie Rosenberg, their paternal grandmother, was ill at the time, the children were placed in the Hebrew Children's Home temporarily. And though numerous efforts were made by the Blochs and Julius' relatives to find a proper foster home, they were unsuccessful. The effect of the institutional life upon the children was quite serious. When their paternal grandmother, Sophie Rosenberg, and Emanuel Bloch visited them, they appeared "nervous, tense . . . and constantly given to tears." Physically, there was a considerable loss of weight and a "general debility."†

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*Pilat, *op. cit.*, p. 257.

†When requests were made after the trial to secure the children's release from the Home in order to have them live with Sophie Rosenberg there were unexplained delays. Finally the City Commissioner of Welfare -- satisfied that the household set up by the paternal grandmother would provide proper conditions of food, clothing, sufficient room and care for the children -- authorized their discharge in July, 1951. They remained with Sophie Rosenberg for one year, until July, 1952, at which time it was decided to locate another home for them for the reasons set forth in a subsequent petition to the Surrogate's Court for "Letters of Guardianship":

"In the early part of 1952, the legal proceedings against the parents, Julius and Ethel Rosenberg, assumed tremendous prominence and importance in the public press and on radio and television.... It was known in the neighborhood in which the grandmother's home was located that Michael and Robert were the sons of Julius and Ethel Rosenberg. The antagonisms which this case evoked... were reflected in the attitudes of the classmates and playmates of Michael and Robert. Disturbing incidents, such as insults and violence, occurred in school and neighborhood."

EXHIBIT F
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Judgment of Julius and Ethel Rosenberg" by John Wexley

and family. Today Mr. Bloch was giving up their apartment. He and Ethel had wanted to hold on to it because of the low rent; it was only $51 a month, but there was simply no money.

One of his sisters had already sold their furniture to the junkman and had received less than $100 for the lot. His machine shop had long been liquidated. Up in the Pro[illegible] somewhere in a shelter home, overcrowded and understaffed, were the two boys reportedly in need of psychological care.* Over in that other prison was his grieving wife. A few days before, on her birthday, he had tried to raise her spirits with a telegram. Today, he had received her reply:

"My dear Sweetheart,

"... With all you have to plague your mind and spirit, you still manage the card and telegram! ... It helps me endure the heartbreak of our separation and that of the children. Each morning before rising I fight down a sense of desperation ... an insane impulse to shriek aloud for them and for you."

When Julius had first learned about his mother-in-law's attitude to the children, he had been shocked. As he commented at times to his attorney, they were indeed a strange lot — those Greenglasses. The only one Ethel seemed to take after was her father, but that poor man had never counted for much in the family. It had been dominated entirely by the matriarchal Tessie. And although she had always been scornful of her daughter in favor of the sons, for some complex reason Ethel had always retained an almost neurotic allegiance toward her as well as toward David. She called this her "family ties."

Even now, with all that David had done to them, Ethel seemed to lack any special bitterness toward her brother. Not even by a passing reference in her letters was there any trace of it. And if there was any bitterness at all, it was because of her mother. In this respect, she would continue to torment herself with the anguish of rejection.

•

All her life, even as a little girl, Ethel had plagued herself about her mother's unrelenting antagonism. In adult years she began to understand what was wrong, but still kept striving vainly for her mother's love. When she had been in high school, her mother had resented her interest in the arts. This was unusual, for immigrant

*When Mr. Bloch explored the possibility of the children visiting them, the Rosenbergs were advised by a specialist in child psychology that it might be detrimental for the children to see them in two separate prisons, and that it would be much better to wait until after the trial, hopefully, following their acquittals.

EXHIBIT G
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Betrayers" by Jonathan Root

resort near Peekskill where, to the amusement of friends, they swam and hiked. Ethel would stand by admiringly while Julie clumsily chopped wood with an ax or incongruously attempted some other outdoor feat. In the evenings, friends remembered, they would be locked in each other's arms in a hammock, Julius dreamily petting his wife while she sang to him.

Many of the FAECT crowd lived at Knickerbocker Village, including Ann and Michael Sidorovich, another pair of names that would haunt Julius and Ethel to their graves.

Ethel remained a full-time housewife after Michael was born, and even sacrificed some of her ideological chores to give all her attention to the rearing of her son. But the boy was sickly and nervous, spent most of each winter in bed with colds, sore throat and fever. Despairing, Ethel took a course in child psychology at the New School for Social Research and, as Michael grew older, she studied music for children at the Bank Street School in Greenwich Village. She also studied the guitar for a year, learned to play an adequate accompaniment to her own singing. Ethel also worked for the East Side Defense Council, a Civilian Defense branch, wrapping bundles for Britain, typing, and soliciting blood donors. Women who worked with her in the Council Office, at 137 Avenue B, recall that she did a great deal of subtle proselytizing, presenting the Party concept of the war as the great crusade to end Fascism on earth, a crusade she believed was led and sustained by the Soviet Union. It was out of place coming from such a frail and seemingly gentle woman.

Once a month Ethel and Julius would write a letter to David Greenglass who had been inducted into the Army and, after a tour of Army training camps, was working as a machinist at an installation known as Los Alamos in New Mexico. Shortly before going into the service, he had married a neighborhood girl and childhood sweetheart named Ruth Prinz. She had gone west to be with David and they were living in a tiny apartment in Albuquerque. David spent only weekends with his wife since he was not permitted to leave Los Alamos, some 60 miles to the north, between Mondays and Fridays. Ruth was employed as a

EXHIBIT H
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Betrayers" by Jonathan Root

blood to the old man, who remained on the critical list for weeks and then rallied slightly and sent for Julius. The son came one night, sat on the edge of the bed, shaved his father and humored him. Three hours after Julius left the hospital, a new truce arranged between them, Harry Rosenberg suffered a massive coronary thrombosis and died.

A year later, Ethel gave birth to her second son. He was named Robert Harry Rosenberg, "in beloved memory," and Julius and Ethel had two problem children.

Julius was ill at ease with Michael, troubled by the simmering dissatisfaction over his own upbringing, and now his distress was doubled. He was fearful he would repeat the mistakes of his own parents and he studied the boys intensely, seeking some clue to guide him in his role as a father. Ethel relied on a selection of texts on child psychology and frequently acted as though she blamed the experts when things went wrong.

On the days when Julius and Michael were thrust together by Ethel's illness, Julius took the youngster to one of three places—Penn Station, the Bronx Zoo, or just riding on the subway. It was all he could think of to divert the youngster and make his own participation in the relationship a minimum one. He had his hands full anyway, for Michael was demanding, [illegible] and given to tantrums which neither Ethel nor Julius could ever control. As passersby stopped to stare at the screaming, twisting Michael, Julius would smile thinly in a silent plea for sympathy, his arched black pencil-line mustache spreading and drooping.

When Julius saw his employment with Emerson Radio nearing an end, he approached Ethel's brother Bernard and a Knickerbocker Village neighbor named Isidore Goldstein and together they raised $5,000, mostly from their families' savings, and formed a partnership called United Purchasers and Distributors with offices in the elder Barnet Greenglass's shop at 64 Sheriff Street. They bought up war surplus hardware and resold it on the wholesale market. It was not profitable and the firm was dissolved after five months.

David Greenglass was out of the Army by this time and they

EXHIBIT I
(Annexed to the foregoing Affidavit of Louis Nizer)

Excerpt from "The Betrayers" by Jonathan Root

Bloch's heated protests. Ethel was taken immediately to the 13-story, orange brick Women's House of Detention, the city prison for women at Sixth Avenue and Greenwich Avenue, and lodged in a cell on the 9th floor.

Tessie Greenglass found herself ill-equipped to take care of two disturbed boys. They slept with her in a sagging double bed and awakened her constantly with nightmares. They had trouble going to sleep anyway that summer because the older children in the slum neighborhood stayed out playing noisily until midnight and even later.

Arrangements were finally made for Michael to attend summer school during the day, which left Robert alone to play listlessly on the sidewalk in front of the tenement, while waiting, as he told everyone who passed, "for my Mommie to come home."

Michael was subject to tantrums which Mrs. Greenglass, now sixty-eight, could not control.

"I can't take care of you," she would tell them, "I'm too old and I'm not well."

Her second son, Bernard, who had gone to work for a silk company after leaving the machine shop, phoned one day to say that his wife, Gladys, long ill with Hodgkin's disease, appeared to be dying and that someone would have to take care of Sharon, his two-year-old daughter.

It was too much for Mrs. Greenglass. "I can't even do what I'm trying to do now," she cried.

"Take it easy," said Bernie.

"Take it easy! How can I take it easy? I can't do nothing. I'm killed. Somebody should be taking care of me."

At the root of her despair was money trouble. Of all her children, only Samuel, the jewelry salesman, was able to contribute to her support. Her sister, Regina Feit, a veteran garment worker who lived on the third floor above her, paid her $10 a week to fix supper for her.

"I get what falls from my sister's chin," said Mrs. Greenglass. Finally she abandoned her lifetime of resolve and independence and applied to the City Welfare Department for aid.

EXHIBIT J
(Annexed to the Foregoing Affidavit of Louis Nizer)

Excerpt from "The Betrayers" by Jonathan Root

his parents' situation, repeatedly asking his father why he didn't come home. Michael was painfully shy and reserved, hardly looking at Julius who finally coaxed him into conversation with candy from the prison canteen and by singing folk songs in which they haltingly joined. Michael did inquire about the death penalty without indicating whether he understood the answers, but what appeared to trouble both boys most was that Julius had shaved off his mustache. "The fact is," Julius reported, "both children are disturbed." On the ride back to New York, Robert told Bloch that "Mommy seemed smaller" and Michael said that "Daddy's voice has changed."

The visit must have unnerved Ethel more than she admitted, for the next two days she suffered violent migraine headaches and an upset stomach. In a letter to Julius immediately afterward, she voiced her anguish:

> I think I had better go to sleep. The tears have begun again. Darling, I need you, love you—oh, my God, where is there an end to this wretched, horrible Torment!

But in her next letter, she had put her own torture back into its political perspective.

> And tell me, oh my sister Americans, how long shall any of your own husbands and children be safe if by your silence you permit this deed to go unchallenged?

This is not to say that Julius or Ethel were insincere in their concern over their children, and perhaps there is no parent who could adequately prepare his children to accept his impending execution. For the next several letters, Julius and Ethel gave their attention to the more prosaic problems of arranging simply for the day-to-day care of the two boys, planning a selection of toys, reading the left-wing *National Guardian* in search of suitable children's books. And soon Ethel writes that she confidently expects to be released a free woman. *In all justice, there can be no other end to this horror. So, say I, let's be gay about it. . . .*

AFFIDAVIT IN SUPPORT OF MOTION OF KENNETH D. McCORMICK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, : 73 CW 2720 (HRT)

-against- : AFFIDAVIT

LOUIS NIZER and DOUBLEDAY & COMPANY, INC., :

Defendants. :

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KENNETH D. McCORMICK, being duly sworn, deposes and says:

1. I am Senior Consulting Editor of Doubleday & Company, Inc. ("Doubleday"), and have personal knowlege of the facts contained in this affidavit.

2. For more than thirty years I was Doubleday's Editor in Chief with personal responsibility for the publication of more than 1,200 trade books, one of which is the subject of this action, THE IMPLOSION CONSPIRACY, written by Louis Nizer and published by Doubleday on February 9, 1973.

3. THE IMPLOSION CONSPIRACY is the story of the trial and post-conviction appeals of the atomic spies, Julius and Ethel Rosenberg. This book is newsworthy and of overwhelming public interest.

4. I have been informed by Doubleday's attorneys that before the defendants could be held liable for the publication of statements which plaintiffs claim are libelous, plaintiffs must prove that the publication was made with actual malice, that is with knowledge on the part of the defendants that the statements were false or that they were made with reckless disregard as to whether they were true or not.

5. This Court should know that prior to publication of THE IMPLOSION CONSPIRACY, Doubleday had published three other books written by Mr. Nizer (MY LIFE IN COURT, THE JURY RETURNS and THE ANALYSIS AND COMMENTARY OF THE OFFICIAL WARREN REPORT) and all have proved to be accurate and have received high literary, as well as professional, praise. Because of this and the fact that I was personally familiar with Mr. Nizer, having served as his editor on the prior books, I formed a high opinion of his reliability to report facts accurately and to present them fairly. Furthermore, I was aware of the preparation and research that went into writing his book.

6. In view of my publishing experience, I can unequivocally affirm that Doubleday conducted itself in the publication of THE IMPLOSION CONSPIRACY according to the usual practices then and now obtaining in the business of publishing trade books. Not now or at the time after publication, or prior thereto, did I have knowledge or did I believe or to my knowledge did anyone at Doubleday know or believe that any statements contained in this book, and specifically those relating to the plaintiffs, were

false or untrue. The sources related by Mr. Nizer in his affidavit on this motion, which I have read, cause me to remain convinced that the statements relating to the plaintiffs are true and accurate. At any rate, it could never be said that Doubleday published these statements with actual malice.

Kenneth D. McCormick

Kenneth D. McCormick

Sworn to before me this

17th day of January, 1974.

Notary Public

JEAN M. CHAPLAN
Notary Public, State of New York
No. 31-6017715
Qualified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF MARSHALL PERLIN SWORN TO MARCH 1, 1974
IN SUPPORT OF APPLICATION TO ADJOURN PENDING MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,

Defendants.

- -x

AFFIDAVIT

73 Civ. 2720 (HRT)

State of New York)
: ss.
County of New York)

MARSHALL PERLIN, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs herein and submit this affidavit in support of an application to adjourn the pending motion for summary judgment directed toward the second count of the complaint until the completion of the discovery by the plaintiffs with respect thereto, including the production of documents and the depositions of the defendants and certain witnesses whose testimony may be necessary in that regard.

2. I have heretofore requested adjournment of the present motion by letters dated February 19, 1974 and February 25,

1974, and I incorporated said letters in this affidavit. After my letter of February 19th, I was advised that I would be afforded an opportunity to present the areas with which we seek to address ourselves in the discovery relating to the second count of the complaint. As an aside, I noted that there was a slight possibility that Mr. Millman, of counsel in the matter, would be unavailable this week with a slight chance of his being present upon the return of the motion on March 1st. It is impossible for him to attend.

3. Before directing this affidavit to some of the fact issues on which of necessity discovery should be had, certain facts, identifying the plaintiffs and the thrust and essence of the second count should be set forth.

The Plaintiffs

4. In 1950 when Michael was seven and Robert was three, their parents were arrested, Julius on July 16th and Ethel on August 11th. Prior thereto on June 15, 1950, their uncle, David Greenglass had been arrested. From that time on the plaintiffs never saw their parents again except in the Death House at Sing Sing, New York.

5. From that period, the summer of 1950, to the time of the execution of their parents, they and the entire country were advised by every form of media that their parents were atomic bomb spies who stole and gave to the Russians the most

important secret this country ever had and that as a result thereof this country's existence was imperiled; and that their parents' conduct led to the Korean War and the fatalities connected therewith. At the same time, living in a period of political hysteria, they as children were pariahs. They were tainted by the blood of their parents. Left homeless, rejected by their maternal grandparents and uncles, and left with a paternal grandparent who because of illness and the circumstances of her family, was unable to attend to her grandchildren.

6. This necessitated their transfer to a foster home, a later stay with the paternal grandparent, Sophie Rosenberg, and later being sent to New Jersey to stay with some acquaintances of their parents.

7. When their identity was known to the parents of some of their friends, they, too, were placed under a cloud. The net result of all of this was that they were with rare exception kept in protective isolation to the extent possible and feasible up to the time of the execution of their parents.

8. Plaintiffs were not able to visit with their parents until the summer of 1951. Thereafter, visits were held at substantial intervals with their parents at the Death House under all the strain, stress and difficulty inherent in such a situation.

9. They were deserted by a substantial portion of their mother's family. One of their aunts became severely

emotionally disabled as a result thereof.

10. In addition to their paternal grandmother and one other relative, the person to whom the children most looked toward for some security during the absence of their parents was Emanuel Bloch, who, in turn, died on January 30, 1954, shortly after the execution of plaintiffs' parents.

11. In the fall of 1953 while attending school in a small community in New Jersey, the school authorities found them persona non grata and they were compelled to leave. Around the turn of the year 1953/54, with the aid of Mr. Bloch, they went to live with Abel and Ann Meeropol, their prospective adoptive parents.

12. Prior to the execution of their parents, New York City agencies and "child care" agencies also addressed themselves to the question of where the plaintiffs should stay and hence there was at least quasi-governmental intervention.

13. In February, 1954 local governmental and non-governmental agencies came to the residence of the plaintiffs to seize them and place them in an institution or elsewhere, since the prospective adoptive parents and certain persons associated with a committee to aid their natural parents were claimed to have been manipulating the children for nefarious purposes and a substantial period passed before they could feel secure in a home with their adoptive parents.

14. The plaintiffs assumed the name of their adoptive

parents and remained incognito throughout the years; they hid their identity and they were compelled to expose themselves in May and June of 1973 by reason of the assaults upon them by the defendants herein. Essentially, the limited number of people who knew them of their parents' generation were those actively engaged in seeking to save their parents before the execution and were associated with the committee organized in their parents' behalf.

The Second Count

15. Defendant Nizer represented in his book that he was going to know as much about the Rosenbergs and the trial as was humanly possible to know ... and that he was not going to write a word "until research had put me [him] under their skins, the prosecutors, the defense counsel, the judges, the appellate judges, the witnesses." (P. 2) He represented in the book that in addition to an intimate knowledge of the legal proceedings he read "every book I could find for or against the verdict" and sought "every person [he] could find who touched their lives or deaths." (P. 4) This is what was represented to the world as the basis of the contents of the book - a claim which itself is an issue plaintiffs factually dispute. Upon this representation defendants write and publish a book purporting to be an accurate narration of events and conversations personally involving the plaintiffs independently and in rela-

tionship with their parents and others.

16. The statements, conversations and events involving the plaintiffs independently and in relationship with their parents and others were false, fictitious and distorted writings, out of context in content and time, and studded with falsely attributed attitudes and feelings of the plaintiffs and their parents. The defendants knew the writings to be false, fictitious and distorted; they recklessly disregarded the truth or falsity of what they wrote; and did not make reasonable efforts to investigate the facts and seek knowledge about the very events they sought to portray - although much information was aavilable to them. The false and fictitious writings of the defendants sought thereby to portray the interrelationship of the plaintiffs and their parents as one wherein the parents manipulated the plaintiffs, resulting in the ultimate rejection of and dissociation with their parents by plaintiffs.

17. Since this affidavit is submitted for the limited purpose of indicating areas of inquiry where discovery must be had in order for plaintiffs to be in a position to respond to the motion for summary judgment, I do not here go into false and inaccurate statements relating to the judicial proceedings nor do I go into areas of the sources of information easily available to the defendants had they sought to write an accurate book and

not falsely portray the plaintiffs and the events to which they were party. It should nevertheless be noted that the moving papers on their face raise substantial issues of fact which require the deposition of both the defendants herein.

18. As acknowledged by the defendants, their motion for summary judgment has been in the process of preparation since August of 1973, substantially completed by mid-early Fall. The timing of the motion demonstrates its prime purpose is to avoid discovery and exposure regarding the Second Count. This was anticipated, and indeed in my affidavit of December 28, 1973,... I stated, referring to the dispute regarding the interrogatories:

> "The defendant Nizer is dissatisfied with the answers because they do not serve as a basis for his preframed motion for summary judgment. When and if defendant Nizer does move for summary judgment, he will also move for a stay of deposition until that motion is disposed of. Regardless of the nature of the answers to the interrogatories one can well assume that additional motions will be made and used however unjustified as grounds for deferring discovery by the plaintiffs."

19. Prior to the production of documents and prior to the commencement of the deposition of defendant Nizer, both of the defendants immediately sought to foreclose discovery directed toward the second count. They have been persistent in doing so since that time. On January 30th their motion for summary judgment was served; the affidavits were sworn to on the

29th of January, 1974, the day the deposition of defendant Nizer commenced.

20. The defendants sought to frame their interrogatories by the use of labels as a simplistic device to obscure the facts and issues underlying the controversy. This Court directed that they reframe their inquiries to elicit the relevant objective facts to the extent they sought to inquire. It is these operative fact issues which require that plaintiffs be permitted to engage in discoveries to prepare a response to defendants' motion.

Some of the areas requiring discovery

21. Plaintiffs wish discovery to establish the defendants' knowledge that the writings were false, fictitious, contrived and distorted, and published in reckless disregard of the truth; and that defendants retroactively falsely contrived conversations, events, attitudes and interpersonal relationships and motives intimately involving the plaintiffs and portraying a false picture of them and their personal and intimate lives, and thus intruded on their privacy and right to be left alone. The very answers to the interrogatories were qualified by the need for discovery for additional relevant data -- now most necessary in light of defendants' motion.

22, Kenneth D. McCormick in his affidavit seeks to

refute the plaintiffs' claim that the publication was made with actual malice, i.e., knowledge of the defendants of the falsity of the writings and that they were made with reckless disregard as to truth. (Paragraph 4 of McCormick Affidavit) In support of this contention Mr. McCormick states that he comes to this conclusion because he believes defendant Nizer, and that Doubleday "conducted itself in the publication of THE IMPLOSION CONSPIRACY according to the usual practices then and now obtaining in the business of publishing trade books." We have commenced discovery of Mr. McCormick in this area. In the main, we have been precluded by directions not to answer, failure to produce relevant documents at the deposition, and delays, from approaching this area with the completeness the facts of the case require.

23. In further substantiation, Mr. McCormick states that he remains convinced that defendant Nizer's statements are true because he has read the "sources related by Mr. Nizer in his affidavit on this motion." To the extent that he has been deposed with reference thereto, Mr. McCormick has been compelled to acknowledge that the only source he read was the Nizer affidavit itself and alone, save for the exhibits attached thereto. There obviously is a basic question of fact, assuming the standards of Sullivan, Time v. Hill, and Rosenbloom v. Metromedia, of whether there was malice as constitutionally defined in the present case. That issue

of fact, whether determined by motion or trial, cannot be resolved absent discovery regarding those facts.

24. I will refer below to some of the pages of the book directly relating to the plaintiffs which are false and fictitious, grossly inaccurate and distorted both by wrongful attributions of statements, attitudes and feelings and by excisions of portions of the copyrighted letters to give a false impression to the reader regarding the plaintiffs and their dealings with their parents. In making reference to these pages, it is noted that they do not represent all of the statements complained of which support plaintiffs' standing to sue and recover from the defendants, but they do represent some of the examples which, read in the context of the book, make them actionable under the law.

(a) Defendants state that plaintiffs were extremely difficult children whose difficulty was caused by their parents who were mystified by the children and chose to ignore them, giving prime and overriding interest to the parents' political objectives. Thus, the plaintiffs were sacrificed by their parents to the cause of communism and the parents' primary concern and regard for each other as two "persistent lovers." (P. 23)

(b) The plaintiffs were neurotic at a very early age as a result of an unwholesome life inferior to that af-

forded underprivileged families and children. (P. 242)

(c) A fictitious conversation is set forth between plaintiffs' parents and their attorney during which the parents' reluctance to see the children is referred to and the parents' acknowledgment that they had denied their children a decent home and had no compunctions therefor because of their first priority as active communists. The parents' attitude is said to be confirmed by their most intimate friend, their attorney. (PP. 365-367)

(d) In the course of a fictitious conversation between plaintiffs' mother and attorney, the mother indicates a reluctance to see the children and her primary concern as being attractive to her husband, Julius, when he is permitted to visit her. (PP. 369-370)

(e) On pages 393-394 an alleged conversation between plaintiffs' father and his lawyer is set forth, followed by excerpts of two letters of the parents. Excised from both letters are all portions relating to the plaintiffs and their parents' feelings about them.

(f) On page 395 there are excerpts from two letters out of context chronologically and out of the context in which they are placed. The letter of June 29, 1951, in which the mother refers to the children, is excised in a form so as to give the impression that the parents' concern was focused upon their sexual deprivation and lack of physi-

al contact. The remainder of the page, as well as page 396, purports to describe a scene when the parents first met in Sing Sing which almost led to their having intercourse on the prison floor until interrupted by the guards, followed with the comment that they submerged all their difficulties, including the children's visits, by giving vent to their desire for sexual consummation.

(g) The defendants claim that the plaintiffs' parents fight collapse with "love letters." Excised from the three letters on page 398 are the references to the children wherein the parents discuss in some detail their concern and plans to meet the children's needs during their incarceration.

(h) After importing that the plaintiffs' parents were more fearful of facing the children than concerned with seeing them, three letters, portions of which are set forth onpage 399 and page 400, also delete both mother's and father's writings regarding the children.

(i) On page 400 the defendants purport to describe in intimate detail the plaintiffs' first visit with their parents, including alleged accurate and knowledgeable descriptions of the children, their personal preoccupations and conversations. A high degree of imagination is manifested on these pages by the defendant author.

(j) A conversation between the plaintiffs and their father is portrayed on page 401. A letter written by plaintiffs' mother is excised to remove those portions wherein she reflects positively about her feeling and regard for the children.

(k) The defendant author describes plaintiff Michael singing a Yiddish folk song with his father in jail (page 402). (Preliminary examination of some of the documents would indicate that the defendant knew prior to the publication of the book that this was false.)

(l) On pages 403-404 two letters are referred to, one of which makes reference to the parents' feeling and thinking of the children. This portion is excised.

(m) On pages 411 and 412 portions of two letters are printed. Removed from both of them are writings regarding the children. The letter of September 16, 1951 deals with the children at length and refers to "the great hurt to our children is the thing that plagues me most." Naturally this portion of the letter is not included.

(n) On page 413 there are two of the copyrighted letters printed on that page, one of which dealt primarily with the mother's writing about the children, all of which is excised.

(o) On page 414, portions of three letters are printed, two of which have portions relating to the children,

all of which portions are deleted.

(p) On page 415, the events of a visit between the children and their father is purportedly described. The tension that the children must have felt and the plaintiffs' parents physical complaints were all shunted aside since plaintiffs' parents were said to be suffering "the elation of martyrdom".

(q) On pages 422-423, three letters are quoted in part. The portions quoted are to establish the triumphant note of plaintiffs' parents in that they allegedly were triumphant, heading toward victory in their approach to martyrdom. Omitted from the letters are extensive reference to portions which would not only contradict the distorted picture given by the defendants but also refer to the children who are discussed at length at the very moment the Rosenbergs were facing scheduled execution - these portions are excised.

(r) The defendants purport to relate that the committee to help the parents have concluded that they must "muster the children into the ranks". In spite of the attorney's opposition the parents are carried away and they "assign them" the children to committee activities putting the children in the limelight; making them exhibits; caused them to hear gruesome references to death in the electric chair; the children were to carry picket signs. As a result the crowds hovered

around the Supreme Court Building aided and abated by the "rabid committee members."

(s) On pages 433-436, the author defendant purports to describe the last visit of the children with their parents at the death house. While the mother was said to be reluctant to see the children, her demeanor was said to be defiant. Thoughts and statements are attributed to the children by the defendant author.

(t) The defendants placed out of context the plaintiffs' mother's letter of February 9, 1953 again omitting portions relating to the children. The parents are said to be so preoccupied with their love for each other and their loyalty to the communist cause and the world revolutionary movement that they are prepared to sacrifice their life, refused to confess their guilt. (Page 437)

(u) On pages 438 and 439, with the date of execution less than seven days, defendants import that the plaintiffs' parents were ready for death to aid the international movement, preoccupied with propoganda by letter and poems and were prepared to leave their surviving children as victims. Ethel was more involved in polemic contests with the Judge than the well being of her children.

(v) On page 483, the author purports to describe Michael's reaction in learning about the execution of his parents, that he fell into a fetal position and lie whimpering.

(w) On pages 491-492, the plaintiffs are alleged to

leave the courthouse after their grandmother was awarded custody along with instructions that they (unlike their parents) love their country and become religious. The defendant,Nizer, who never spoke to the children or attempted to do so states that they are college graduates, married and have children and are "normal, decent citizens living a happy life with affectionate relationships with their new parents and friends" - importing they rejected their parents' evil path.

25. The above itemization of some of the areas of inquiry do not discuss the majority of the page references set forth in the answers to the interrogatories which in turn the plaintiffs claim are not merely false, but were known to be false by the defendants and written in reckless disregard of the truth. These other portions of the book in turn have impact and affect the meaning of those I have mentioned herein and themselves give cause for relief, all read in the context of the entire book. These include completely contrived conversations and fantasies which are held out by the defendants to be true.

26. Ten and a half of the thirteen pages of the Nizer affidavit are quotations from other sources which defendants maintain establish that the plaintiffs were adversely emotionally affected by the events around them from the time of their parents' arrest to a period shortly after their execution. The one reference to pre-arrest authority for the children

having emotional problems is an answer from the trial transcript given by the plaintiffs' father explaining the circumstances in which he spoke to a woman who was an alleged courier or suspect, who also happened to be a social worker.

27. There have been several replies by the defendants to my letters of February 19 and February 25, 1974, portions of which suggest that all of the documents requested have been produced. This is untrue. The defendants have objected to the notice to produce; they have not complied with that request any more than they have replied to requests subsequently made by letter and in the course of the deposition. It is respectfully suggested that the crucial issues of fact which the plaintiffs wish to present to this court on the motion for summary judgment can only be presented if they are permitted to proceed, without delay from the defendants, with the necessary discovery. It is only upon the completion of that discovery that the plaintiffs can respond to the motion and be afforded the due process that they are entitled to in the consideration of the motion and the complex issues posed therein.

Marshall Perlin

Sworn to before me this
1st day of March, 1974.

LAWRENCE L. NUSS
NOTARY PUBLIC, State of New York
No. 41-7141950
Qualified in Westchester County
Term Expires March 30, 1976

PLAINTIFF'S RESPONSE TO REQUEST FOR A STATEMENT UNDER RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

73 Civ. 2720

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,

(HRT)

Defendants.

----------x

The plaintiffs submit the following statement in the nature of a General Rule 9(g) statement at the request of the Court. A full statement of all of the genuine issues of fact pursuant to Rule 9(g) cannot be presented at this time in that it requires discovery by the plaintiffs of the defendants and other essential witnesses. Plaintiffs have been precluded from engaging in this discovery relating to the second count of the complaint. Depositions in progress have been limited for all pretrial purposes to the first count of the Complaint and that it is far from completed. In the course of the production of some of the documents requested, some, in part, could be said to relate to the second count but plaintiffs have been prevented by

reason of the defendants' refusal to respond to questions thereon and defendants contention that plaintiffs are barred from such inquiry by this Court's directions. All of the documents heretofore submitted by plaintiffs in the form of affidavit, memorandum and letter since the service of the motion and at the return thereof have been in support of plaintiffs application to defer the disposition of the motion for summary judgment until the requested discovery has been made so that plaintiffs may submit affidavits and exhibits in opposition thereto. Hence the plaintiffs have not yet submitted any affidavits in opposition to the motion and any such papers, if submitted now, would be partial if not fragmentary in light of the restrictions imposed in plaintiffs discovery.

Each and every material allegation of the second count, Paragraphs 21 through 28, are denied by the defendants. A summary of the second count is set forth in Paragraphs 15 and 16 of the affidavit of Marshall Perlin dated March 1, 1974. The said writings [redacted] pertain[redacted] to the most personal and intimate matters relating to the plaintiffs independently and in relation to their parents.

In response to interrogatories, the plaintiffs specified certain pages of the book, The Implosion Conspiracy, including marked portions of certain pages noting further that these statements were inaccurate,

false, fictitious and malicious, contained intentional inaccuracies and misrepresentations and invaded the privacy of the plaintiffs. The statements referred to and each of the pages are to be read independently and in conjunction with each other and in the context of the entire book and the clear import and implications therein. (See answers to 10, 11, 12 and 13 and the subdivisions thereof in the answers and further answers to the interrogatories).

With reference to certain of the responses to the interrogatories, plaintiffs stated that additional answers would be given after discovery and deposition (Pages 2, 4, 9, 22, 23, 24, 94, 196, 198, 199, 365-367, 369-371, 393-394, 395-396, 400-402, 413-414, 415, 418, 419, 434-436, 437).

Since the writings about the plaintiffs in the defendants book is inextricably interwoven with and part and parcel of the writings about plaintiffs parents and their relationship inter se, the false, fictitious and distorted writings of one in the context of the instant book necessarily resulted in a false portrayal of the other, in addition to writing of matters of a personal and intimate nature of the most private kind and relating to the feelings and attitudes of the plaintiffs as an intimate part of the immediate Rosenberg family.

As to writings on the various pages as referred to hereinabove, there are the following issues: (1) were the writings false, inaccurate, distorted or fictitious; (2) did the defendants know them to be false, inaccurate, distorted or fictitious; (3) did the defendants cause them to be written in reckless disregard of truth or falsity and (4) were the writings an invasion of the plaintiffs privacy.

Since defendant Nizer holds himself out as an eminent legal scholar and investigator of the facts, legally and personally, and represents in the book that its contents are the fruit of his personal investigation of all of tho facts and written under standards applicable to a law review writer and Pulitzer Price journalist and, further, represents and vouches for the truthfulness and accuracy of the contents of the entire book, the writings complained of and specified below, by reason of their false, fictitious and distorted nature alone, are actionable.

The meaning and import of the false writings and what they import to a reader in the context of the entire book are issues of fact as well as mixed questions of fact and law.

All of the above genuine issues of fact pertain to the following writings in the book:

1. The representations as to the investigation and research done and information acquired and standards

and criteria claimed to have been used in writing the book were as set forth on pages 2, 4, 5, 6 and 9 of the book.

2. The claimed origins of support and sources of money and the motives of the supporters as set forth on pages 5 and 6 of the book.

3. Were the statements made regarding the applications to the court and the number of judges who considered the matter as set forth on page 9 of the book and was the representation of the author of the guidelines used by him on page 9 of the book true or false.

4. The truth or falsity of the writings on pages 22 and 23 of the book as they relate to the plaintiffs and their parents; and the portrayal of the rearing of the plaintiffs by their parents and the characterization of the plaintiffs and the reasons attributed therefor.

5. The truth or falsity of the statements of the relationship of plaintiffs father with his father on pages 23 and 24.

6. The inaccurate paraphrasing of the trial transcript on pages 79, 80 and 81 importing that they were actual verbatim excerpts from the transcript.

7. The statement to the effect that the supporters of plaintiffs parents disseminated the great

secret of the atomic bomb and that no testimony was offered contrary to that of Professor Koski.(page 86).

8. The claimed manner of detection of Klaus Fuchs and its claimed relationship to detecting and leading to the arrest of plaintiffs parents (page 94).

9. In various portions of the book purported excerpts of the transcript are given, either in quoted conversational fashion or by purported reproduction thereof when, in fact, they were neither verbatim nor accurate reproductions. See pages 98, 99, 104, 105, 106, 107, 126, 127, 157, 158, 159, 161, 165, 280 and 281. The statement that Yakovlov fled the country after plaintiffs parents were arrested (page 150).

10. The attribution of activities to plaintiffs parents prior to their arrest and their attitudes thereto and its relationship to the motives of plaintiffs parents for asserting their Fifth Amendment privilege on the witness stand (page 196).

11. The purported conflict between plaintiffs parents and their attorneys relative to the assertion of the Fifth Amendment and the alleged fanatic attitude of plaintiffs father and the result thereof as described on pages 198 and 199.

12. The alleged sequestration of the jury during the trial and the statement that it was plaintiffs

father who brought the matter of the Pearl indictment to the attention of the jury (page 222).

13. That even prior to plaintiffs parents difficulties, plaintiff Michael was demonstrating neurotic tendencies arising out of the deprivation of a wholesome life caused by plaintiffs parents rearing of their children (page 242).

14. The purported description of David Greenglass in the courtroom during the summation to the jury of the plaintiffs parents attorneys (page 297).

15. The purported behavior and conversation of plaintiffs parents with themselves, their co-defendants, Sobell and their attorneys, their feelings, their comments about plaintiffs and seeing the plaintiffs; the plaintiffs parents acknowledgement that in their communist activity that they had deprived the plaintiffs of a decent home and that they were aware that it was their activities which led to their trial and conviction which resulted in further suffering imposed upon their children, and for which they were at fault, and that their attorney was aware of plaintiffs parents deficiencies in rearing the children (pages 365-367).

15. An alleged meeting had between the plaintiffs mother and her attorney and the contents of their conversation which included references to the plaintiffs

and anticipated visitation of plaintiffs with their parents. The conversations purported to be verbatim and are set forth in quotes (pages 369-371).

16. An alleged conversation between the plaintiffs father and his lawyer in the context of quoting excerpts from two letters, excising those portions relating to the plaintiffs and their parents feelings about them (pages 393-394).

17. Setting forth excerpts from two letters out of context chronologically, excising references to the plaintiffs and going on to describe the plaintiffs first purported encounter in the death house at Sing Sing and the purported behavior of the plaintiffs parents at that time and the alleged consequences thereof, including intervention of prison authorities ages 395-396).

18. The description of plaintiffs parents behavior upon learning of an adverse judicial decision and their exchange of "love letters" deleting all references to the plaintiffs. (page 398).

19. Attributing reluctance and fear of plaintiffs parents to have their children visit them and then setting forth excerpts of letters, omitting portions of the same relating to the children (pages 399-400).

20. A purported description of the plaintiffs first visit with their parents in the death house with purported description of conversation and behavior on the part of the plaintiffs, conversations allegedly held and a song purportedly sung (pages 400-402).

21. Purported description of actions of the Supreme Court and members thereof and excerpts of letter, omitting portion wherein the plaintiffs parents discuss and express feelings regarding the plaintiffs (pages 403-404).

22. Printing excerpts of plaintiffs parents letters, excising lengthy portions relating to the parents discussions and feelings regarding their children (pages 411-413).

23. Portions of letters to plaintiffs parents once again excising portions relating to plaintiffs (page 414).

24. The purported description of a visit between plaintiffs and their father at the death house attributing statements to plaintiffs, describing their intimate and detailed behavior (pages 414-415) and stating in this context that the feelings of plaintiffs parents regarding their children were all sublimated by their "elation of martyrdom" (page 415).

25. After quoting three letters of plaintiffs and excising portions relating to the plaintiffs, plaintiffs parents are said to be triumphant and florid with their feelings of martyrdom and purportedly direct their supporters to "muster the children into the ranks" and "assigning them" even over their attorneys opposition to such activities and exposing them to limelight, public display and morbid discussions to death in the electric chair (pages 422-423).

26. On pages 433-436, it is said that plaintiffs parents visited them while in handcuffs; then there is a purported description of the last visit of the plaintiffs with their parents wherein the plaintiffs behavior, attitude and statements are set forth down to an alleged description of the plaintiffs conduct at the moment of departure (pages 433-436).

27. The writings regarding plaintiffs mother letter of February 9th, excising portions relating to the plaintiffs and plaintiffs parents willingness to die rather than acknowledging their guilt (page 437).

28. Feelings, attitudes and motivations attributed to plaintiffs parents at the time they were waiting death and their willingness to further the international communist movement even if plaintiffs became victims (pages 438-439).

29. The purported description of plaintiffs father behavior in meeting with his mother at the death house (page 440).

30. The purported description of plaintiff Michael's behavior upon learning of his parents death (page 483).

31. A description is given of plaintiffs behavior after the execution of their parents and after they were placed in custody of their grandmother, after which they are placed in care of adoptive parents, and imports that their adoptive parents gave them what their natural parents deprived them of, thus importing plaintiffs rejected their natural parents standards and way of life (page 492).

In response to the defendants statement pursuant to General Rule 9(g), the plaintiffs state: The specifications are not as set forth in paragraphs 1, 2 and 3 thereof but, rather, as set forth in plaintiffs statement hereinabove. Plaintiffs are identified by their names and pictures in the book. The plaintiffs are Michael Meeropol and Robert Meeropol, who are also named and identified as Michael Rosenberg and Robert Rosenberg. The adoption and custody proceedings after their parents execution were reported in the press and

their adoptive parents names were then made known to the public.

Dated: New York
April 10, 1974

Marshall Perlin,
Attorney for Plaintiffs

36 West 44th Street
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TO:

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Satterlee & Stephens
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OPINION OF H.R. TYLER, JR., U.S.D.J. DATED JULY 31, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER, DOUBLEDAY & COMPANY, INC., and FAWCETT PUBLICATIONS, INC.,

Defendants.
----------X

U.S. DISTRICT COURT
FILED
JUL 31 1974
S.D. OF N.Y.

OPINION

73 Civ. 2720 HRT

#41035

FRIEDMAN & PERLIN, ESQS., New York City, by Marshall Perlin, Esq., Attorneys for Plaintiffs.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, ESQS., New York City, by George Berger and Martin Stein, Esqs., Attorneys for Defendant Louis Nizer.

SATTERLEE & STEPHENS, ESQS., New York City, by Robert M. Callagy and James F. Rittinger, Esqs., Attorneys for Defendant Doubleday & Company, Inc.

TYLER, D.J.-

Defendants Louis Nizer ("Nizer") and Doubleday & Company, Inc. ("Doubleday") have moved for summary judgment pursuant to Rule 56, F. R. Civ. P., dismissing the second count of the complaint in which plaintiffs Michael Meeropol and Robert Meeropol ("the Meeropols") seek $1,000,000 in damages for alleged defamation and invasion of plaintiffs' privacy by reason of statements appearing in the book entitled The Implosion Conspiracy, written by the defendant Nizer and published by the defendant Doubleday. For the reasons stated below, the motion is granted.

Plaintiffs are the natural children of Julius and Ethel Rosenberg who were executed in June, 1953, following a trial for treason in this court. The present action arises from the publication of an account of the Rosenberg-Sobell trial ("Rosenberg trial") and subsequent events culminating in the execution of the Rosenbergs. In their complaint, plaintiffs allege that Nizer utilized substantial portions of copyrighted letters written by Ethel and Julius Rosenberg to each other juxtaposed to " false, fictitious, and distorted statements" to "deceive the reader and

to impress the public with the authenticity and credibility" of the writings in order to embarrass, humiliate and ridicule both plaintiffs and their parents. Plaintiffs further allege that the defendants have sought to pass off the book as an accurate rendition of the trial and other legal proceedings solely for promotional purposes.

Apart from the aforementioned allegations that the book fails to depict the legal proceedings of the trial in an accurate and detached manner, the complaint alleges that the defendants sought to portray the interrelationship of the plaintiffs and their parents as "one wherein the parents manipulated the plaintiffs, resulting in the ultimate rejection of and dissociation with their parents by plaintiffs." In this regard, plaintiffs assert that the defendants knew the writings to be false, fictitious and distorted; failed to properly investigate the facts concerning the events they sought to portray; and published the false and fictitious statements in reckless disregard of the truth or falsity of the statements.

In response to defendants' interrogatories, as revised in this court's order dated January 14, 1974, the plaintiffs have specified 77 pages or passages of the book upon which they have based their claims of libel

and invasion of privacy.

I. DEFAMATION

This motion, of course, requires application of the principles enunciated in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), extended in Rosenbloom v. Metromedia, 403 U.S. 29 (1971), and, most recently, constricted in Gertz v. Welch, _____U.S._____, 42 U.S.L.W. 5123 (June 25, 1974). Defendants have moved for summary judgment on the grounds that no genuine issues of material fact exist and they are entitled to judgment as a matter of law.

Plaintiffs predictably contend that this motion is not presently ripe for decision because there are issues of fact as to the truth or falsity of specific passages in the book and as to defendants' malicious intent to injure plaintiffs by the falsity of the passages. But, plaintiffs cannot defeat the motion for summary judgment by asserting that there is an issue for the jury as to malice unless they make some showing, of the kind contemplated by the Rules, of facts from which malice may be inferred. Thompson v. Evening Star Newspaper Co., 394 F.2d 774 (D.C. Cir. 1968).

As I view the record, plaintiffs have failed to produce any evidence beyond the mere allegations that defendants published the book with reckless disregard of the falsity of its contents.

Summary judgment is particularly appropriate at an early stage in cases where claims of libel or invasion of privacy are made against publications dealing with matters of public interest and concern. In recognition of the constitutional privilege of free expression secured by the First and Fourteenth Amendments, the courts in libel actions have recognized the need for affording summary relief to defendants in order to avoid the "chilling effect" on freedom of speech and press. Dombrowski v. Pfister, 380 U.S. 479, 487 (1965); Konigsberg v. Time, Inc., 312 F. Supp. 848 (S.D.N.Y. 1970); Cerrito v. Time, Inc., 302 F. Supp. 1071 (N.D.Cal. 1969), aff'd., 449 F.2d 306 (9th Cir. 1970). Accordingly, the constitutional privilege mandates the granting of a motion for summary judgment as soon as it becomes clear that a plaintiff cannot establish the "actual malice" required for recovery in defamation actions of this nature. 1/

An analysis of a libel claim must commence with the seminal case of New York Times v. Sullivan, 376 U.S. 254 (1964). In New York Times, the Supreme Court superimposed constitutional limitations on state libel

laws and held that the freedoms of speech and of the press guaranteed by the First and Fourteenth Amendments prohibit a public official from recovering damages for a defamatory falsehood relating to his official conduct, unless he proves that the statement was made with "actual malice", which the court defined as the publication of false statements with actual knowledge of their falsity or with reckless disregard for their truth or falsity. 376 U.S. at 279-80. See, also Garrison v. Louisiana, 379 U.S. 64, 75 (1964); Miller v. News Syndicate Co., 445 F.2d 356 (2d Cir. 1971).

A logical extension of the New York Times rule followed three years later in Curtis Publishing Co. v. Butts, and its companion, Associated Press v. Walker, 388 U.S. 130, 162 (1967). The Court therein concluded that the New York Times test should apply to criticism of "public figures" as well as "public officials". In Curtis and Walker, the Court extended the constitutional privilege to protect defamatory criticism of non-public officials who "are nevertheless intimately involved in the resolution of important public questions, or, by reason of their fame, shape events in areas of concern to society at large." Id., at 164.

In 1971, a plurality of the court extended the constitutional privilege once again to protect defamatory criticism against private individuals. Rosenbloom v. Metromedia, 403 U.S. 291 (1971). Although no more than three Justices joined in any single opinion in Rosenbloom, Mr. Justice White, in a concurring opinion, summarized the concensus of the opinions this way:

> "[I]t would seem that at least five members of the Court would support each of the following rules:
>
> For public officers and public figures to recover for damage to their reputations for libelous falsehoods, they must prove either knowing or reckless disregard of the truth. All other plaintiffs must prove at least negligent falsehood, but if the publication about them was in an area of legitimate public interest, then they too must prove deliberate or reckless error."

Thus, a plurality of the Court agreed that to sustain an action for defamation when the public or general interest privilege applies, the complainant must offer "clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether it was false or not." 403 U.S. at 52. According to Rosenbloom, one who published a communication concerning another on a matter of public or general interest was not subject to liability, even though the communication was false and defamatory, unless he published it with

knowledge of its falsity, or in reckless disregard of its truth or falsity. Rosenbloom, supra; Restatement Second on Torts, § 581A (Tentative Draft April 25, 1974). The focus in Rosenbloom was directed to the newsworthy event; the event or issue was the significant aspect, rather than the individual involved.

On the eve of this memorandum, the Supreme Court decided Gertz v. Welch, supra, which has the effect of circumscribing the Rosenbloom decision. The issue in Gertz was whether a newspaper or broadcaster, having published defamatory falsehoods about an individual who was neither a public official nor a public figure, could claim a constitutional privilege against liability for the injury inflicted by those statements. The Court concluded that the New York Times standard requiring actual malice was inapplicable in a case involving a private individual. In effect, the Court adopted the dissenting opinion of Justice Harlan in Rosenbloom. In his dissent in Rosenbloom, Justice Harlan concluded that the constitutional privilege should not obtain where defamatory falsehood harmed a private individual. He concluded that the states could constitutionally allow private individuals to recover damages for defamation on the basis of any standard except liability without fault.

In Gertz, the Court reaffirmed the standards first enunciated in New York Times and Curtis, immunizing from liability publishers of defamatory falsehoods concerning public officials and public figures unless the plaintiff can show that the publisher knew the statement was false or in reckless disregard of the truth. The Court deemed the Rosenbloom extension to private individuals "unacceptable" and held that the states can permit recovery for libel by a private individual without proof of the publisher's knowledge of falsity or reckless disregard of the truth, even though the defamation might concern a matter of public interest.

The teaching of Gertz, nonetheless, avails plaintiffs little; its applicability to the present case is severely limited. Under the tests enunciated in Curtis and Gertz, plaintiffs surely must be classed as public figures. Beyond any doubt, they have "assumed roles of especial prominence in the affairs of society" and "they invite attention and comment." Gertz, supra at 5130.

As children of the Rosenbergs, the plaintiffs spent much of their early years in the public spotlight. The activities of their parents were monitored by book, magazine and newspaper throughout the world. As

children of famous parents, they achieved "general fame or notoriety in the community." Gertz, supra at 5132. Notwithstanding the fact that plaintiffs later may have renounced the public spotlight by changing their name to Meeropol, as children they were the subjects of considerable public attention. Significantly but not surprisingly in this respect, the only reference to plaintiffs as adults is on the last page of The Implosion Conspiracy, and plaintiffs do not claim that this reference is defamatory.

The Court in Gertz distinguished among defamation plaintiffs by the remedy available to the injured party:

> "The first remedy of any victim of defamation is self-help -- using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater."

Plaintiffs have not, and, indeed, cannot argue that they do not have access to the channels of effective communication. 2/

Accordingly, I conclude that the test to be applied in the present case is the New York Times standard as extended to public figures in Curtis. In order to be held liable, defendants must have acted with a

"high degree of awareness...of probable falsity." St. Amant v. Thompson, 390 U.S. 727, 731 (1968). The evidence in this case reveals that defendants had no such awareness.

Of the 77 passages complained of, 48 do not mention or refer to plaintiffs but refer only to plaintiffs' parents or others. Plaintiffs do not contend that they have an actionable claim because their parents have been libeled;[3/] rather, they assert that the defamatory passages concerning their parents cast a direct reflection upon themselves and are thus actionable. Typical of these passages is the following:

> "When Ethel and Julius learned of the new setback, they were not surprised but their spirits dropped even lower. They fought collapse by writing love letters to each other."

The text then extracts a couple of sentences from letters written by Ethel and Julius to each other indicating their passionate desire to be together. In this context, plaintiffs assert that they have been libeled by the mere omission of portions of the letter referring to their parents' feeling for the children. Plaintiffs argue that because references to the children have been excised from the letters, the book presents a jaundiced and inaccurate portrayal of the parents' filial love and concern. They claim that defendants seek to impart to readers that plaintiffs "have rejected and dissociated

themselves from their parents and from what they represented. Finally, they urge that defendants have bowdlerized portions of the letters in order to insinuate parental rejection of plaintiffs by Ethel and Julius through their passive acceptance of their execution and martyrdom.

In this court's view, such arguments are tortured, contrived and meritless. Upon construing the passages that contain letters with references to plaintiffs excised in light of the entire text, one can only conclude that defendants have fairly and accurately portrayed the family struggles throughout the trying events following the trial. Assuming arguendo that defendants did excise portions of the letters that revealed the parents' love and concern for the children, this does little or nothing to satisfy plaintiffs' burden of showing malice on the part of defendants.

The Implosion Conspiracy, as indicated by its contents and the affidavits of the author and the publisher, was the product of considerable research and care. Defendant Nizer, in deposition, has described the extensive note-taking of the official records of the case. In his affidavit, the senior consulting editor of Doubleday, Kenneth D. McCormick, has stated that he was aware of the preparation and research that went into the writing of the book. McCormick attested to the practices followed in

the publication of the book and denied having knowledge or belief that any of the statements contained in the book were false or were published with malice.

Conversely, plaintiffs' sole opposing affidavit is that of their chief counsel, who merely reasserts the allegations of the complaint. The record as a whole, thus, establishes that there was no knowledge of falsity (if indeed, there is a falsity), no serious doubt concerning the truth of any statement in the article and certainly no reckless disregard of whether statements in the book were false.

To the extent that The Implosion Conspiracy contains minor fictionalization or approximations of conversations that may have taken place between plaintiffs and their parents, these cannot be considered defamatory. Such techniques do not rise to the constitutional level of a clear and convincing showing of reckless disregard. As in Miller v. News Syndicate, supra, any "deviations from or embellishments upon" the information obtained from the primary sources relied upon were minuscule and can be attributed to the leeway afforded an author who attempts to recount and popularize an historic event.

the book with actual malice,[4] plaintiffs continue to assert that they are entitled to further discovery into the truth or falsity of the statements.[5] I disagree. The statements were neither false nor defamatory. Assuming the contrary, it is clear from the record, consisting of extensive interrogatories, depositions, and affidavits, that plaintiffs cannot show that the book was published with actual malice. In the absence of any presentation of facts in opposition, summary judgment must lie.

II. INVASION OF PRIVACY

In their complaint, plaintiffs also allege that defendants intruded upon their privacy and right to be left alone by falsely portraying a picture of the most personal and intimate aspects of plaintiffs' lives. Defendants respond with a dual contention that the second count must be dismissed because: (1) the statements concern matters of legitimate public interest and are therefore constitutionally protected; and (2) none of the passages complained of legally sustain a claim for invasion of privacy.

An analysis of the plaintiffs' right of privacy must properly and necessarily begin with the incipience of the legal recognition of the right

of privacy.[6] Unlike libel, the right of privacy is a relative newcomer to the field of torts. Legal recognition of an individual's "right to be left alone" occurred in 1890 with the publication of an essay on the subject of the right of privacy. Warren and Brandeis, The Right of Privacy, 4 Harv. L. Rev. 193 (1890). In response, the New York legislature enacted sections 50 and 51 of the Civil Rights Law.[7]

In their oft-quoted article, Warren and Brandeis recognized that certain clearly defined limitations to the right existed. They acknowledged the competing interests of the desire to protect "the inviolate personality" on the one hand, and the necessity of keeping the avenues of news and of the dissemination of information free and unimpeded on the other hand. Most important for the purposes of this case, they recognized that the right of privacy "does not prohibit any publication of matter which is of public or general interest." 4 Harv. L. Rev. 193, 214. They drew a distinction between those persons in whose private affairs the community has no legitimate concern and those who have eschewed their right to live their lives screened from public observation and thus are the subject of legitimate interest of their fellow citizens. With striking similitude,

courts, in interpreting the New York statutes, have held that those statutes do not apply to items of current and newsworthy interest. Although the Warren and Brandeis article distinguished between a "private" individual and a public figure, the courts have construed the latter term broadly so as to diminish the significance of the distinction. Koussevitzky v. Allen, Towne & Heath, Inc., 188 Misc. 479, 68 N.Y.S.2d 779, aff'd., 69 N.Y.S.2d 432 (1947).

The activities of the Rosenberg children during the trial and their interrelationship with their parents carried on in the setting of a death row prison were necessary, albeit arguably peripheral, ingredients in the author's attempt to present a complete history of the Rosenberg trial and its aftermath. Assuming any statements in the book are actionable because they invade plaintiffs' right of privacy, they concern matters properly within the "orbit of public interest and scrutiny", Koussevitzky, supra at 783, and thus are constitutionally protected.

Even putting aside the inescapable conclusion that the statements are constitutionally protected, I find that, for other reasons, those statements do not sustain a claim for invasion of privacy. First, 48 of the 77 passages specified by plaintiffs do not refer to them at all. The parties are in

agreement that an action for the invasion of the parents' privacy will not lie. Rome Sentinel Co. v. Boustedt, 43 Misc. 2d 598, 252 N. Y. S. 2d 10 (1964). Members of the family of a deceased person cannot sue for invasion of the right of privacy where the statement is made concerning the deceased relative. Schumann v. Loew's Incorporated, 144 N. Y. S. 2d 27 (1953).

Moreover, since they are not named in the book, plaintiffs cannot recover for the remaining 29 passages thereof said to be actionable. Plaintiffs are identified in the book solely as Robert and Michael Rosenberg. Nowhere in the book are they identified or referred to as Meeropol, the name they have used for the last twenty years. This missing element renders the claim for invasion of privacy defective. Toscani v. Hersey, 271 App. Div. 445, 65 N. Y. S. 2d 814 (1946); University of Notre Dame v. 20th Century Fox Film Corp., 22 App. Div. 2d 452, 256 N. Y. S. 2d 301, aff'd., 15 N. Y. 2d 940 (1965).

Plaintiffs lamely contend that they were identifiable, named Rosenberg as they were, because of the existence of a trust fund for their benefit and the fact that the name Rosenberg, as well as their adopted name, has appeared on certain school records. Similarly, in Waters v. Moore, 70 Misc. 2d 372, 334 N. Y. S. 2d 428 (1972), the plaintiff alleged that his right of privacy had been infringed by a fictionalized account of an event in which he participated

appearing in the motion picture, "The French Connection." The identification was claimed to be based upon the use of his name in the book [8/] and by the performance of an actor whose appearance resembled plaintiff. Relying upon University of Notre Dame v. 20th Century Fox, supra, the court dismissed the complaint stating:

> "Neither is the test whether an individual's identity can be ascertained from his involvement with the actual event or by reference to external sources." 70 Misc. 2d at 375, 334 N.Y.S.2d at 433.

Ironically, plaintiffs' counsel states in his affidavit that plaintiffs "assumed the name of their adoptive parents and remained incognito through the years", hiding their identity except to a limited number of persons who had been involved in the parents' struggle. In sum, plaintiffs attempt to carry water on both shoulders by saying that The Implosion Conspiracy invaded their privacy by causing them to come into public scrutiny, but at the same time claiming they were identifiable as Michael and Robert Rosenberg all along. This they cannot do. The fact remains that their present legal name, which they have been using for twenty years and continue to use, does not appear in the book. This fact renders any possible claim for invasion of privacy under § 51 fatally defective. It is the plaintiffs who

have identified themselves to the public, not the defendants.

In an attempt to circumvent the limitations of § 51, plaintiffs claim that a new common law right to privacy has been established in New York. See, Galella v. Onassis, 353 F. Supp. 196 (S.D.N.Y. 1972), aff'd. and mod. on other grounds, 487 F.2d 986 (2d Cir. 1973). The courts in New York have consistently held that an action for invasion of privacy is exclusively statutory. Roberson v. Rochester Folding Box Co., 171 N.Y. 538, 64 N.E. 442 (1902); Hill v. Hayes, 18 App. Div. 2d 485, 240 N.Y.S.2d 286 (1st Dept. 1963). Assuming the Gallela case recognized a right of privacy beyond the statutory grant, the court limited its decision to an extreme situation involving abusive, physical intrusion, which is not presented here.

Plaintiffs are not entitled to recover for an invasion of privacy because references to them as the Rosenberg children are highly incidental to the main purpose and subject of the book. Twenty-nine isolated references of a fleeting and peripheral nature are insufficient to support a claim under § 51. University of Notre Dame, supra. 9/

Furthermore, the right of privacy statute does not apply to an historical account of a newsworthy event or individual unless the account is fictional in character. Koussevitsky, supra; D'Altomonte v. New York Herald Co., 208 N.Y. 596, 102 N.E. 1101, modifying 154 App. Div. 453,

139 N.Y.S. 200; Sidis v. F-R Publishing Corp., 113 F.2d 806, 807 (2d Cir.), cert. denied, 311 U.S. 711 (1940). The Implosion Conspiracy in the main is an historical and factual account of the Rosenberg trial, relying extensively on trial transcripts and primary sources. Although portions of the book can be read to suggest that Ethel and Julius Rosenberg were obsessed with each other and their political objectives to the exclusion of the children, the author has taken pains to present a balanced picture of the family relationships. 10/

Unlike the publication at issue in Goldwater v. Ginsberg, see, 414 F.2d 324 (2d Cir. 1967), The Implosion Conspiracy is a scholarly study built upon exhaustive research and considerable concern for the subjects of the study. There are statements in the book which plaintiffs might find offensive and, perhaps, to an extent, untrue. There are, however, no revelations of any intimate details which would tend to outrage public tolerance. "There is nothing repugnant to one's sense of decency or any statement that takes the book out of the realm of the legitimate dissemination of information on a subject of public interest." Koussevitzky, supra. Finally, any reference in the book to the plaintiffs concerns their childhood, and it is flatly acknowledged in the last paragraph of the book

that plaintiffs are normal and exemplary young men today.

As a matter of law, therefore, the second count of plaintiffs' complaint must fail, whether understood as a claim for libel or one for invasion of privacy. Summary judgment must be and is granted dismissing this count of the complaint on the merits.

It is so ordered.

Dated: July 31, 1974

U.S.D.J.

FOOTNOTES

1/ E.g., Miller v. News Syndicate Co., 445 F.2d 356 (2d Cir. 1971); Washington Post Co. v. Keogh, 365 F.2d 965, 968 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967); Bon Air Hotel, Inc. v Time, Inc., 426 F.2d 858 (5th Cir. 1970); Treu'er v. Meredith Corp., 455 F.2d 255 (8th Cir. 1972); Time, Inc. v. Johnston, 448 F.2d 378 (4th Cir. 1971); Dacy v. Florida Bar, Inc., 427 F.2d 1292 (5th Cir. 1970); Time, Inc. v. McLaney, 406 F.2d 565 (5th Cir. 1969); Twenty-five East 40th Street Restaurant Corp. v. Forbes, 30 N.Y.2d 595, 331 N.Y.S.2d 29 (1972).

2/ Twenty years following the events contained within the book, we currently find the drama of the trial portrayed on special television documentaries and discussed with some regularity in newspaper accounts. See, e.g., New York Times at 1, March 10, 1974.

3/ In New York, no person, not even a close relative or descendant, can bring an action for defamation of a deceased person, Rose v. Daily Mirror, Inc., 28 N.Y. 335, 31 N.E.2d 182 (1940), except, possibly, in those comparatively rare instances where a living relative is able to show that his reputation is damaged by the defamation of the deceased. Eagles v. Liberty Weekly, 137 Misc. 575, 244 N.Y.S. 430 (1930). (Sup.Ct. N.Y.Co. 1930 (Valente, J.)).

4/ Defendants' motion for summary judgment on count II of the complaint was originally scheduled for February 15, 1974. Plaintiffs were served with the motion on January 30, 1974 and with defendants' memorandum of law in support of their motion for summary judgment on January 31. After an adjournment was granted pursuant to the request of plaintiffs, an additional request by plaintiffs for an adjournment of the motion to April 5 was denied and oral argument was held on March 1. The court directed the parties to submit briefs, affidavits and statements pursuant to General Rule 9(g) of this court. Plaintiffs' brief in opposition to the motion was filed on March 18,

1974 and the 9(g) statement was filed on April 11, 1974. The affidavit accompanying plaintiffs' brief in opposition was submitted by the plaintiffs' attorney. Indeed, the procedural history of this case is replete with attempts by plaintiffs' counsel to obfuscate the issues and to delay the progress of the case.

5/ The central question in an action for defamation or invasion of privacy is not whether the statements are true or false. Gertz, supra at 5128; Koussevitzky v. Allen, Towne & Health, Inc., 188 Misc. 479, 68 N.Y.S.2d 779, 783 (1947). In an oft-quoted passage from Abrams v. United States, 250 U.S. 616, 630 (1919), Justice Holmes stated that "the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market."

6/ The laws of defamation and privacy have tended to merge, and the distinction between these two branches of law has been obfuscated by courts and commentators. That an action for invasion of privacy may come to supplant an action for defamation is not without considerable support. Nonetheless, in the State of New York, both the laws of defamation and privacy remain viable grounds upon which a claim for recovery can be based. Different interests, of course, are safeguarded by the two theories. Generally, the law of defamation protects an individual from harm to relational interests, while the right of privacy has developed to compensate an individual for the injury to his feelings, to prevent inaccurate portrayal of private life, and, in some instances, to prevent one's private life from being depicted at all. Shiles v. News Syndicate Co., 313 N.Y.S.2d 104, 27 N.Y.2d 9, 261 N.E.2d 251 (1970); Warren and Brandeis, 4 Harv. L. Rev. 193, 197 (1890).

7/ The pertinent parts of the statute are as follows:

"Article 5. Right of Privacy

§ 50. Right of privacy - A person, firm or corporation that uses for advertising purposes, or for the purposes of trade,

the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

§ 51. Action for injunction and for damages. - Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by the last section, the jury, in its discretion, may award exemplary damages...."

8/ Credits for the motion picture stated it was based on the book.

9/ By way of a further ironical inconsistency in plaintiffs' claims, it may be recalled that in their defamation claim, plaintiffs assert that many of the sections that utilize quotations from the Rosenberg letters delete references to the children and thus portray an inaccurate view of the childrens' relationship to their parents. Aside from the inconsistency, this argument tends to accentuate the incidental nature of references to plaintiffs in the book.

10/ See, e.g., The Implosion Conspiracy, supra, at 412-413, 473-474.

DEFENDANT'S NOTICE OF MOTION DATED JANUARY 31, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

-against- :

LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC., :

Defendants. :

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73 Civ. 2720

(HRT)

NOTICE OF MOTION

S I R:

PLEASE TAKE NOTICE that upon the annexed affidavits of Louis Nizer and Robert M. Callagy sworn to January 29, 1975 and the exhibits annexed thereto, the complaint and the answers of Louis Nizer and Doubleday & Company, Inc., the supplemental complaint and the answer of Fawcett Publications, Inc. the Interrogatories to plaintiffs and Answers and Further Answers thereto and the prior proceedings had herein, the undersigned will move this Court on February 14, 1975 in Room 1506 at the United States Courthouse, at Foley Square, at 2:15 P.M., or as soon thereafter as counsel can be heard, for summary judgment pursuant to Rule 56 FRCP dismissing counts I and II of the complaint and the entire supplemental complaint upon the grounds set forth in the annexed affidavit of Louis Nizer, and providing in said judgment for a permanent injunction restraining plaintiffs from instituting any future action in the United States against any licensee for the reprint rights to The Implosion Conspiracy on the

grounds set forth in the annexed affidavit of Robert M. Callagy and for such other and further relief which as to this Court may seem just and proper.

Dated: New York, New York
January 31, 1975

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STATEMENT PURSUANT TO GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

- against -

LOUIS NIZER, DOUBLEDAY & COMPANY, INC., and FAWCETT PUBLICATIONS, INC.,

Defendants.

STATEMENT PURSUANT TO GENERAL RULE 9(g)
73 Civ. 2720 (HRT)

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Defendants, for their statement pursuant to General Rule 9(g) of this Court and in support of their motion for summary judgment dismissing Counts I and III of the complaint and Counts I, II and III of the supplemental complaint, state that the following material facts are those as to which defendants contend there exists no genuine issue to be tried:

1. The Death House Letters was first published in June, 1953 by Jero Publishing Company, Inc. and is no longer being published. It contains approximately 81,000 words and consists principally of letters.

2. The letters dated June 16, 1953 from Ethel Rosenberg to President Eisenhower and June 19, 1953 from Julius and Ethel Rosenberg to Emanuel Bloch do not appear in Death House Letters. These letters do appear in The Testament of Ethel and Julius Rosenberg, a book published in 1954 by Cameron & Kahn.

3. No copyright application was ever filed in the United States Copyright Office for The Testament of Ethel and Julius Rosenberg.

4. The said letters of June 16, 1953 and June 19, 1953 were published by Dennis Dobson Ltd. in England in 1953 in a book entitled, The Rosenberg Letters. No request for ad interim protection of this publication pursuant to 17 U.S.C. §22 was ever filed with the United States Copyright Office.

5. Jero Publishing Company was liquidated on August 31, 1956 and formally dissolved in January, 1957.

6. Exhibits 1 through 4 annexed to the moving affidavit are the true copies of financial statements of Jero Publishing Co., Inc. and The Rosenberg Children's Trust Fund for the years indicated thereon.

7. Since June 30, 1956 neither Jero Publishing Company, Inc. nor The Rosenberg Children's Trust Fund have received any income from the sale of Death House Letters.

8. Defendants' book, The Implosion Conspiracy, was first published in February, 1973, by Doubleday and Company, Inc., in a hard cover edition. It was later published by Fawcett Publications, Inc. in a soft-cover edition. The Implosion Conspiracy contains approximately 228,900 words.

9. The Implosion Conspiracy contains excerpts from no more than 28 of the letters contained in Death House Letters. Those 28 letters are all identified in paragraph 1 of the Answers to Interrogatories.

10. The first quoted excerpt appearing in The Implosion

Conspiracy, which plaintiffs claim infringes on their copyright in Death House Letters, is found on page 393 thereof and the remaining 27 excerpts appear on pages 394-95, 398-401, 403-404, 411-14, 422, 437-39.

11. The total number of words from Death House Letters which plaintiffs claim were used in The Implosion Conspiracy is 1,957.

12. Exhibits 5 through 31 annexed to the moving affidavit are true copies of the pages of the books from which the moving affidavit states they are taken.

13. Plaintiffs do not allege that defendants in The Implosion Conspiracy have copied anything from any of the unpublished writings which are the subject of Count III of the complaint and Count III of the supplemental complaint.

14. Plaintiffs have recently signed an agreement with the Houghton-Miflin Company for the publication of a book entitled "We are your Children". This book will contain some or all of the writings which are the subject of Count III. The publication of said book is scheduled for April, 1975.

Dated: New York, N.Y.
January 31, 1975.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON

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